

From: [McFerran, Lauren](#)
To: [Craig Becker](#)
Subject: RE: congratulations
Date: Thursday, January 21, 2021 1:46:00 PM

Many thanks. I am excited about the challenge ahead.

Best wishes,
Lauren

From: Craig Becker <cbecker@aficio.org>
Sent: Wednesday, January 20, 2021 11:48 PM
To: McFerran, Lauren <Lauren.McFerran@nlrb.gov>
Subject: congratulations

Lauren: Many congratulations on your chairpersonship and all the best as you steer the ship forward. Take care, Craig

Craig Becker
General Counsel
AFL-CIO
815 16th St., N.W.
Washington, D.C. 20006
[\(202\)637-5310](tel:(202)637-5310)

From: [Ohr, Peter S.](#)
To: [Kate Suisman](#); [McFerran, Lauren](#)
Cc: [Charlotte Noss](#); [Sheila Maddali](#); [Kelly, David A.](#); [Choe, Iva Y.](#)
Subject: RE: introduction and meeting request
Date: Tuesday, February 2, 2021 9:43:20 PM

Thank you for the introduction, Lauren.

Kate, I am a big proponent of outreach, especially to non-traditional labor organizations. I welcome the opportunity to have a bold conversation on how the NLRB's Regional Offices and the Office of the General Counsel can better communicate and inform the public of the Agency's mission.

David Kelly, Deputy Assistant General Counsel (copied) will arrange a Zoom meeting. I've also copied Acting Deputy General Counsel, Iva Choe. I'm looking forward to our discussion.

Peter

Peter Sung Ohr, Acting General Counsel

(he/him/his)

National Labor Relations Board

From: Kate Suisman <kate@nwjp.org>
Sent: Tuesday, February 2, 2021 8:05 PM
To: McFerran, Lauren <Lauren.McFerran@nlrb.gov>
Cc: Charlotte Noss <cnoss@nelp.org>; Sheila Maddali <smaddali@n-lan.org>; Ohr, Peter S. <Peter.Ohr@nlrb.gov>
Subject: Re: introduction and meeting request

Chair McFerran, thank you so much for the detailed email- and you replied within a day, which is better than most of us who are not newly-appointed to chair a federal agency!

We will follow up with Acting GC Ohr and the Office of Congressional and Public Affairs, once a Director is in place.

Take care and thanks again,

Kate, Sheila and Charlotte

Kate Suisman (pronouns: she/her/hers)
Coordinator of Campaigns and Alliances
Attorney

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On Tue, Feb 2, 2021 at 1:44 PM McFerran, Lauren <Lauren.McFerran@nlrb.gov> wrote:

Apologies for taking so long to get back in touch with you. I appreciate your reaching out.

Generally speaking, the "Board side" of the NLRB (i.e., the adjudicative side) does not take private meetings with advocacy groups, on the advice of our Ethics office. It is more common for our prosecutorial side (the "GC side") to take such meetings. To the extent that you would like to discuss questions of labor law or policy, I would suggest that you contact our Acting General Counsel, Peter Ohr, to arrange a meeting. I have copied him on this message so that you can easily connect. (In contrast to the General Counsel, when members of the Board engage in communications with constituents, it is typically in the form of outreach and involves panel discussions or speeches that are open to the general public or to a diverse audience.)

To the extent that you would like to discuss the Board's public outreach efforts and our activities to inform workers, and low-wage workers particularly, about their rights under the law, how to file a charge under the NLRA, etc. that would be a discussion best held with the Director of our Office of Congressional and Public Affairs. That position is vacant right now, but I hope to fill it within the next week or so. I will certainly circle back with you once that position is filled to provide contact information.

Again, thanks for reaching out. Hope everyone is staying safe.

Lauren McFerran

From: Kate Suisman <kate@nwjp.org>

Sent: Monday, February 1, 2021 12:33 PM

To: McFerran, Lauren <Lauren.McFerran@nlrb.gov>

Cc: Charlotte Noss <cnoss@nelp.org>; Sheila Maddali <smaddali@n-lan.org>

Subject: Re: introduction and meeting request

Hello Ms. McFerran, we are following up on Judy Conti's email of last week. We look forward to starting a conversation between the NLRB and our networks. To give you some context, attached is a transition memo that resulted from the work of 400+ worker organizations across the country. It covers many low-wage worker issues. The ones most relevant to the NLRB are likely in the "Worker Organizing" section, though these issues intersect with the other issue areas, like "Job Quality."

We know it will take some time for the agency to start holding meetings. Members of our networks will be available for an initial meeting anytime after mid-February. In terms of topics, our networks are meeting next week to re-prioritize in light of the bold actions already taken by

the Administration. We can get you a list of those topics soon, and certainly before any meetings take place.

Here is our contact information.

- Sheila Maddali, Executive Director, National Legal Advocacy Director (NLAN): smaddali@nlan.org
- Charlotte Noss, Worker Center Program Director, National Employment Law Project (NELP): cnoss@nelp.org
- Kate Suisman, Coordinator of Campaigns and Alliances, Northwest Workers' Justice Project: kate@nwjp.org

Thank you,

Kate Suisman (pronouns: she/her/hers)
Coordinator of Campaigns and Alliances
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On Fri, Jan 29, 2021 at 11:53 AM Judy Conti <jconti@nelp.org> wrote:

Lauren McFerran, CHAIR of the NLRB (I really like the way that looks!) please meet Charlotte Noss from NELP, Sheila Maddali from the National Legal Advocacy Network, and Kate Suisman from the Northwest Worker Justice Project.

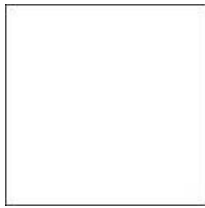
Charlotte, Sheila and Kate have worked with a large group of legal service providers and worker centers on a whole host of transition recommendations, many of them dealing with the NLRB. They'd love to meet with you and other appropriate folks at the Board to not only discuss the initial recommendations, but to also talk about setting up some regular communication not just with advocates, but with worker leaders who can bring the voices of the directly impacted into the NLRB.

I appreciate your willingness to work with them to set up an initial meeting and figure out how to best proceed moving forward.

I'll leave it to the four of you to follow up from here – no need to keep me on the email chain.

Thanks everyone!

Judy Conti



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Low-Wage Workers' Priorities for the Biden/Harris Administration

December 10, 2020

INTRODUCTION

This document speaks to many of the pressing issues facing low-wage workers and the policy priorities of the low-wage worker movement. The issues described below disproportionately affect Black, Indigenous and other People of Color (BIPOC) and immigrants, especially when those people are also women, LGBTQ+, have criminal records or disabilities, or other marginalized statuses. We recognize the many legacies of slavery and structural racism that shape our experiences of work and life. We bring an explicitly anti-racist lens to our work. We are committed to uplifting the most impacted communities as leaders in the movement for just and dignified work.

We applaud the Biden/Harris Administration for recognizing the intrinsic connection between racial, economic and gender justice by placing equity as one of its four Priorities. However, this Administration has a momentous challenge in front of it, not only to undo some of the damage done by the previous administration's racist, xenophobic and anti-worker policies -- but to proactively create an infrastructure for safer, more just and equitable workplaces despite pervasive structural racism.

We believe that rising to these challenges requires deep, intentional and long-term partnerships with impacted communities, advocates and community-based organizations to not only increase effective enforcement of labor law, but also to empower, activate and build the leadership of low-wage workers. This document is the beginning of what we hope will be an ongoing, transformative conversation.

WHO WE ARE

We are an informal coalition of approximately 400 organizations across the country: local worker centers as well as national networks and regional affiliations of worker centers, legal services nonprofits, state and local policy organizations, immigrants' rights organizations and coalitions, national and international policy organizations, and many others. We were convened by the [Low-Wage Worker Legal Network](#) (LWWLN), anchored by the Northwest Workers' Justice Project, the [National Legal Advocacy Network](#) (NLAN) and the [National Employment Law Project](#) (NELP). We coordinate locally and regionally, brought together by common interest, geography, issue area, and solidarity – and seek to coordinate our national advocacy by coming together in this coalition to develop this policy agenda.

This document is the product of this large-scale, national collaboration. It began with a participatory process to gather federal advocacy priorities from across the coalition. Those priorities were arranged into categories, and a survey was developed to identify and rank the

priorities within our network of advocates. The categories we arrived at, in order of importance to survey respondents, are: (1) Immigrant Workers' Rights, (2) Worker Organizing, (3) Health & Safety, (4) Job Quality, (5) Discrimination, and (6) Temporary Worker Visa Programs. The working group for each of these categories further developed the priorities – and all of our recommendations have been combined into this document.

Throughout this process, over 110 distinct organizations participated: 64 worker centers, 29 legal services organizations, 12 national policy organizations, and many others. Approximately 40 advocates from our coalition met with the Agency Review Team to preview our recommendations.

A list of the organizations who have participated in this process is included in [Appendix A](#). Survey results are included in [Appendix B](#).

ONGOING ENGAGEMENT

Before delving into the policy recommendations below, we want to emphasize that it is crucial for the Biden/Harris Administration to demonstrate its commitment to racial justice, gender equity, and BIPOC and immigrant workers' rights by engaging regularly and directly with community-based organizations and advocates through the entirety of the Administration's term. This engagement must be based on principles of partnership and inclusion, going far beyond mere sharing of information and instead embodying true inclusion of leaders from impacted communities and workers' advocates in assisting the Administration in carrying out its mission to achieve racial equity through an economic recovery that centers working families, and specifically, to ensure compliance with federal labor and civil rights laws. We offer several suggestions for how the Administration should engage in this collaboration with workers' rights organizations:

1. Direct the DOL, EEOC, OSHA, NLRB, and any other relevant executive branch entities to create a cross-agency **Enforcement Strike Force** to oversee all workers' rights enforcement work for the Biden/Harris Administration. It should begin by reviewing and evaluating current enforcement efforts and immediately rescinding harmful regulations and sub-regulatory guidance. The Strike Force should ensure these agencies are using all of the tools and policies at their disposal, including robust outreach and education, to fully enforce labor and civil rights laws.
2. Enact a **National Strategic Enforcement Partnership Initiative** to incorporate workers, worker groups and unions into active participation in all of the agencies' enforcement work. Workers' groups are integral to successful enforcement efforts, as they are trusted by workers and have a deep understanding of issues on the ground. They are also best able to reach marginalized BIPOC and immigrant communities, including those most

impacted and least likely to complain, and to ensure continued involvement of worker complainants through the long enforcement process.

- The Administration can look to the public-private partnership spearheaded by California Labor Secretary Julie Su for guidance. The [California Strategic Enforcement Partnership](#), wherein a private foundation funds a cohort of worker centers and legal services organizations to partner with the state labor agency to substantially reduce the incidence of labor law violations for low-wage workers in California. The California Partnership consists of three main areas: (1) industry strategy teams where agency staff and community partners meet regularly to share information and design strategies particular to their industry of focus, thereby building a shared understanding and engaging in real collaboration; (2) annual convenings of all members of the Partnership, to build skills and relationships over time; and (3) worker cohort exchanges and trainings, facilitated by NELP, which are designed to support community-based organizations and worker centers.
 - Other examples of successful partnerships between enforcement agencies and community-based organizations are found in [San Francisco](#), [Santa Clara County](#), [Seattle](#), Minneapolis, Miami-Dade County, and Boston, among other locations.
3. Establish **formal working groups** for each issue area identified in this document: Immigrant Workers, Worker Organizing, Health & Safety, Job Quality, Discrimination and Temporary Work Visa Programs. In order to ensure meaningful and consistent engagement, each working group should include workers and worker advocates to identify priorities, evaluate and oversee implementation of the Strategic Enforcement Partnership, provide input on issues that advance worker protections, and effectively disseminate information to marginalized workers and communities.
 4. Host **quarterly meetings** where the EEOC, OSHA, NLRB, DOL and other relevant agencies meet with our coalition to hear directly from low-wage workers and their representatives about experiences on the ground and suggestions for administrative reform, with a goal of continuing to improve on collaborative efforts and address the concerns many BIPOC and immigrant workers have about interacting with the government.
 5. Develop a comprehensive outreach initiative to disseminate accessible and culturally relevant information to the public about worker protections under the EEOC, NLRB, OSHA, DOL and other relevant agencies.
 6. Secure the sustainability of the robust collaborations with worker centers and community-based organizations by establishing a grant program through which workers'

organizations are funded for ongoing engagement in collaborative efforts such as the National Strategic Enforcement Partnership, issue-area working groups, and their daily work conducting outreach, educating and empowering workers, and providing support for workers interfacing with enforcement agencies.

To assist with ongoing engagement and implementation of our policy recommendations, our three coordinators will serve as point people for our coalition of workers' rights advocates. Please reach out to them to follow-up about any aspect of this document:

- Sheila Maddali, Co-Director, National Legal Advocacy Director (NLAN): smaddali@n-lan.org
- Charlotte Noss, Worker Center Program Director, National Employment Law Project (NELP): cnoss@nelp.org
- Kate Suisman, Coordinator of Campaigns and Alliances, Northwest Workers' Justice Project: kate@nwjp.org

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POLICY RECOMMENDATIONS

I. Immigrant Workers' Rights

Immigrant workers make up [almost 1 in 5](#) workers in the U.S. labor force and form an integral part of our communities and labor movement. Undocumented workers constitute an estimated 4-5% of the workforce, and a much higher percentage in industries like agriculture, domestic work, construction and day labor. As the COVID-19 pandemic has highlighted in stark terms, however, immigrant workers routinely face dangerous conditions, health risks, arbitrary exclusions from important benefits such as Unemployment Insurance, rampant violations of their workplace rights, and retaliation or the threat of retaliation that includes the use of workers' immigration status to silence worker voices. The xenophobic and racist nature of these policies becomes even more apparent when these workers' contributions are taken into consideration: according to the IRS, in 2015 alone 4.4 million ITIN holders paid \$23.6 billion in taxes. For the large proportion of immigrant workers who are also BIPOC, these challenges compound those tied to structural racism and discrimination in our economy and beyond. The Biden/Harris Administration must act swiftly to reverse the extensive damage caused by the racist and xenophobic words and actions of the previous administration directed at immigrant workers and immediately move towards a vision of labor standards and enforcement that centers the needs and experiences of immigrants. Only then can the administration aim to fully recognize the dignity, value and interconnectedness of all workers.

(See [Temporary Work Visa Programs](#), below, for additional recommendations.)

Day 1 Priorities

- 1. DOL and/or the White House should issue a statement(s) to highlight the Administration's commitment to enforcing the rights of immigrant and low-wage workers and holding employers accountable for violations and retaliation.** This may include, for example, a statement affirming that immigrant workers are protected by federal labor and civil rights laws and warning against the use of retaliation, similar to statements issued in [Massachusetts](#) and [Seattle](#). Building back trust between the federal government and immigrant communities will take a concerted effort by the Biden/Harris Administration and should address the reasons why immigrant communities have feared contact with federal agencies. Specifically, labor agencies should unequivocally commit that, absent a court order, they will not share the personally identifiable information of individual workers with other federal agencies, such as DHS. In general, the labor agencies should commit to abiding by privacy best practices such as the Fair Information Practice Principles.
- 2. DOL should quickly reinstate the [Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws](#).** The DOL should create a senior-level immigrant worker rights position in the Office of the Secretary at DOL to serve as a point person for all issues arising under the implementation of inter-agency agreements between DOL and DHS. This person should

also serve as a point of contact for advocates regarding policies impacting immigrant workers. The DOL should ensure the Interagency Working Group meets its goals to enhance coordination in those cases where federal responsibilities to enforce labor, employment and immigration laws may overlap. This must be done in order to ensure that workers who cooperate with labor and employment enforcement may continue to do so without fear of retaliation, to ensure that unscrupulous parties do not attempt to misuse immigration enforcement or labor laws to thwart or manipulate worker protections and to ensure the effective enforcement of these laws.

3. **DOL should re-publish on agency websites the [DOL and DHS Revised Memorandum of Understanding \(MOU\)](#) Concerning Enforcement Activities at Worksites and the [Addendum to the Revised MOU](#) (DOL-DHS MOU).** *(See also Items in the “Long-Term Priorities” in this section, below, for necessary improvements to the MOU.)*
 - **DOL should provide advocates around the country with a clear DOL contact for issues related to the DOL-DHS MOU, as well as clear DOL contacts in the states for these issues.** In addition, DOL should ensure that worker advocates can work in effective partnership with the agency to advance broader strategic enforcement goals. *(See [Ongoing Engagement](#), above.)*
4. **DOL should rescind the [guidance document](#) regarding U and T visa certifications issued July 1, 2019 by WHD, and grant full relief to the plaintiffs in [related litigation](#).**
5. **DOL should expand the scope of its U visa certification program.** The DOL should expand the list of [qualifying crimes](#), to include, for example, rape, perjury, sexual assault, abusive sexual conduct, sexual exploitation, and blackmail, among others, for which it will issue certifications. There are no statutory or regulatory limitations on the DOL’s ability to issue certifications for those crimes. The DOL should also expand the authority to issue certifications beyond WHD, as that unnecessary restriction has limited the ability of workers who have been victims of qualifying crimes to pursue U visa certifications in investigations by OSHA and other core labor standards enforced by other Divisions within the DOL. The Secretary of Labor should ensure U visa certifications are available to any worker whose qualifying crime was detected in the course of any DOL investigation.
6. **DOL should, at a minimum, [triple the number of investigators](#) within the WHD and OSHA to ensure that staff can effectively address critical immigrant worker needs,** including the pressing need for additional language capacities among investigators and additional staff to process U and T visa certification applications.
 - Regarding language access, advocates around the country report that DOL investigators often lack the language skills to ensure effective outreach and communication with immigrant workers. DOL should create immigrant worker specialists for WHD and OSHA in each regional office to conduct targeted outreach and enforcement activities; and
 - Regarding U and T visa certifications, the need for additional staff will increase as policy changes at DHS and DOL lead to more certification requests.

7. **To combat retaliation against immigrant workers**, DOL should make clear its commitment to seek the full range of damages awardable and appropriate in each individual case brought under either the FLSA or the OSH Act, ensuring that all workers, including immigrant workers, can access meaningful relief. (See also [*Job Quality*](#) below.)
8. **Ensure adequate access to OSHA protections for immigrant workers.** (See [*Health & Safety*](#) below.)
9. **DOL should intervene with SSA and urge SSA to immediately cease issuance of EDCOR (“No Match”) Letters.** These letters have been used by employers to retaliate against immigrant workers who engage in protected activity under labor and employment laws and are ineffective in their purported purpose of ensuring that all workers are properly assigned their earnings in SSA records.

Longer-Term Priorities

1. **As part of the Interagency Working Group, DOL, NLRB and EEOC should enter into a new MOU with DHS to build out processes for labor enforcement agencies to seek and obtain affirmative immigration relief** for victims, witnesses and other adversely affected workers in its cases. USCIS should work with labor enforcement agencies on a process for workers to petition for affirmative relief under existing authorities, utilizing the expertise of labor enforcement agencies in recommending affirmative relief in appropriate cases.
2. **DOL should aim to expand the DOL-DHS MOU to address unnecessary limitations** and ensure that immigration enforcement activities do not interfere with state and local labor law enforcement and to ensure interior immigration enforcement activities carried out by ICE that are not part of its worksite enforcement activities do not conflict with labor law enforcement by:
 - **Redefining the term “labor dispute” in the DOL-DHS MOU** to encompass, at a minimum, disputes as described by the NLRA. DOL should expressly clarify that this definition of labor disputes extends to farmworkers, domestic workers and other workers who files a claim under a labor or employment law enforced by the agencies who are parties to the DOL-DHS MOU;
 - **Expressly clarifying that the definition of “labor dispute” in the DOL-DHS MOU includes** all state and local worker protection laws; any claims pending before any state or local labor and employment agencies, any civil lawsuits alleging violations of any state, local, or federal workplace laws and any grievances or similar claims filed pursuant to a collective bargaining agreement;
 - **Expand the DOL-DHS MOU to also explicitly protect workers from immigration enforcement activities that take place outside of the worksite, such as immigration enforcement at a worker’s home.**

3. The DOL and the NLRB should create a repository for employers who have violated employment laws or committed unfair labor practices to pay into, if [Hoffman Plastics](#) precludes payment of compensation of any form to the victims. The funds in that repository could be used to pay damages owed by bankrupt or otherwise judgement-proof employers. (See Liebman & Pearce concurrence in [Mezonos Maven Bakery](#).)
4. Support expansion of unemployment insurance and other work-linked benefits to ensure that they cover all workers who contribute to the systems, and ensure that all workers in mixed-status families and workers with ITINs are eligible to receive the benefits. (See also [Job Quality](#) below.)
5. The Biden/Harris Administration should **expand protections against retaliation** for immigrant workers, including exploring legislation similar to that enacted in [California](#), prohibiting immigration-related threats in retaliation for protected conduct such as seeking unpaid wages.

II. Worker Organizing

The previous administration not only enacted anti-worker policies but also interfered with worker organizations. Under the Biden/Harris Administration, worker organizations must be empowered to combat increasingly precarious working conditions and the growing imbalance of power between employers and workers. To build an economy and labor market that works for all workers, especially BIPOC and immigrant workers, the Biden/Harris Administration must focus on increasing collaboration with worker centers and other non-union community groups, reinstatement of key Obama Administration rules and building support for transformative legislation within the first hundred days.

Day 1 Priorities

1. **Transparency and Ongoing Engagement:** The DOL, OSHA, EEOC and the NLRB should perform a internal assessments of their collaborations with worker centers and issue statements of their intention to engage in just and fair enforcement practices that include both racial justice in enforcement practices and robust partnerships with worker centers and grassroots organizations that promote information sharing and transparency.
2. **Immediate reinstatement of Obama Administration rules at the NLRB,** for example:
 - **Union Election Expedition Rule:** This rule was instituted to ensure that workers who want to organize to create a union would have fewer impediments to doing so, including a shorter wait between the filing of a union petition and the vote on unionization. This rule should be reinstated to support workers' ability to collectively bargain.
 - **Union-Buster Disclosure Rule:** This rule, which required employers to disclose company dollars spent on anti-union campaigns, should be reinstated because the lack of transparency hinders a union's ability to educate workers who seek to make a decision about unionization.

3. **Reinstate Weingarten Rights for Non-Union Workers:** The NLRB should reverse its [position](#) prohibiting non-union workers from having a coworker present during a conversation with their employer that they reasonably believe could lead to disciplinary action. Allowing workers to have a co-worker present during conversations with the employer will reduce retaliatory, discriminatory and unlawful actions by the employer.
4. **Clarification Differentiating Unions from Worker Centers:** A lack of understanding of worker centers and bad-faith interpretations of labor law have created an environment where worker centers are under constant threat of being misclassified as labor organizations. This misclassification would add administrative burdens and additional scrutiny to worker centers, and interfere with their ability to function and effectively support non-union workers. Therefore, it is important that the DOL and the NLRB issue clarifying statements that worker centers are not labor organizations.
5. **Uniform training for NLRB regional offices:** There are significant differences between the regional NLRB offices in terms of investigating cases regarding “protected concerted activities” for non-union workers and in preventing retaliation by employers seeking to use immigration status to deter workers from engaging in protected concerted activity. Some regional offices clearly embody the intentions of protecting immigrants’ rights in NLRB policies, for example, GC Memorandum [98-15](#), which were enacted to prevent employers from raising immigration status until it becomes relevant as an affirmative defense in the damages phase of a charge. These policies and best practices to protect immigrant workers should be uniformly implemented across regional offices.
6. **Ensure Physical Accessibility of Agency Offices:** Mandate by Executive Order that all future locations of agencies charged with protecting workers including EEOC, DOL, NLRB, and OSHA be easily physically accessible to the low-wage community via public transportation, that they should be located in buildings that can be accessed without requiring government-issued identification, and that all locations of the aforementioned agencies (current and future) be required to display external identifying signage.

Longer-Term Priorities

1. **Funding Worker Center Collaborations:** Effective enforcement can be maximized through agency partnerships with worker centers and community-based organizations. DOL should design and implement a real partnership with worker centers and worker advocacy organizations to maximize the effectiveness of DOL’s enforcement work. (*See [Ongoing Engagement](#), above.*)
2. **Build support for transformative legislative change,** such as
 - A national just cause standard, as in Philadelphia, where [legislation has been passed to guarantee Just Cause protections for parking employees](#), and New York City, where [fast food workers are fighting for the same protections](#). Supporting national just cause legislation would address the increasingly precarious nature of

work and resolve the clear need for this protection across the country (*see also [Job Quality](#), below*);

- Expand the right to organize, collaborate with farmworker advocates and support legislation that recognizes the rights of farm workers and domestic workers to organize under procedures and policies appropriate to the unique circumstances of those industries;
- Support the enactment of the [Domestic Workers' Bill of Rights](#); and
- Advocating for legislation to neutralize the detrimental impact of *Janus v. AFSCME* on BIPOC and immigrant workers.

III. Health & Safety¹

The pandemic has laid bare the reality that low-wage workers do not have adequate safety and health protections on the job. BIPOC and immigrant workers are disproportionately represented in many of what are now recognized as “essential jobs”: caring for our families, harvesting and processing our food, cleaning workplaces and other critical needs. Many of these jobs are also among the lowest paid, with little or no access to quality health care, yet are among the most dangerous workplaces. Some worksites, for example private homes where domestic workers labor, are explicitly excluded from protections, providing workers with no remedies in case of injury, COVID-19 transmission or accidental death. The same is true for day laborers and many gig workers. Fear of retaliation is widespread when it comes to safety and health reporting, with workers being forced to work in unsafe conditions because of the very real risk of losing their job if they speak up. In addition to protective measures that must be enacted immediately, bold measures must be enacted to address the underlying disparities and injustices that existed long before the pandemic shone a spotlight on them.

Workers have a critical perspective on effective workplace health and safety protections for their own worksites. These workers must be empowered to raise their voices regarding if, when and how work can be done safely. The Biden/Harris Administration must meaningfully enlist the skills, knowledge and experience of workers and their organizations in every aspect of a robust, multifaceted plan to prevent workplace transmission of COVID-19 and protect worker and public health. (*See [Ongoing Engagement](#), above.*)

Day 1 Priorities

1. Strengthen OSHA Enforcement and Employer Compliance

- **Ensure robust and consistent enforcement of health and safety protections nationally:** Fully staff and operate OSHA offices in all regions. Ensure language access for all workers by hiring OSHA staff that speak languages commonly spoken in local worker communities, relying on available public and private

¹ Organizations in our coalition are also closely aligned with the [Councils for Occupational Safety and Health](#) (COSH) network. A number of members of that network responded to our survey and joined our planning calls. Our priorities are largely based on those developed by the COSH Network.

sources of data for information about language needs in low-wage industries in each region. Additionally, bolster oversight of state plans, ensuring they enact and enforce measures that are at least as protective as any new federal standards that are adopted. Overhaul OSHA's penalty structure to substantially increase monetary fines against employers who put workers' lives at risk. Pay special attention to serious accidents and fatalities of BIPOC and immigrant workers, who are often asked to do the most dangerous jobs with the least protection; and

- Engage workers and worker organizations as partners in strengthening OSHA compliance through the institution of a **National Strategic Enforcement Partnership Initiative and Working Groups**. (See [Ongoing Engagement above](#)).

2. Enact an OSHA Emergency Temporary Standard to address COVID-19 and future airborne infectious diseases that is informed by science, backed by robust enforcement and designed with meaningful input from impacted workers, unions, worker centers and COSH groups. The standard at a minimum should require:

- A written plan for all workplaces and employer-controlled housing and transportation, utilizing the Hierarchy of Controls, to eliminate or reduce worker exposure to infectious disease hazards. This plan should be developed in collaboration with workers, unions and other worker organizations. These controls should include effective protection against airborne transmission of viruses, recognizing that longer exposure leads to more transmission. This is especially relevant for implementing controls in crowded, poorly-ventilated indoor workplaces and employer-provided housing;
- Rigorous sanitation and distancing protocols in workplaces, employer-provided housing and employer-provided transportation;
- Measures to ensure employers supply adequate, appropriate PPE so workers do not have to reuse PPE or provide their own;
- COVID-19 testing at no cost to workers;
- A presumption that for any workplace that fails to comply with these OSHA standards, any employee contracting COVID-19 is presumed to have been infected on the job;
- Clear guidance that working conditions that would expose workers to COVID-19 would qualify as imminently dangerous;
- Detailed quarantine procedures, including availability of facilities for workers in employer-provided housing and guarantees of wage replacement for workers who are required to quarantine. The Biden/Harris Administration can look to the [Emergency Temporary Standards](#) recently adopted in California for guidance, as it mandates that employers maintain an employee's earnings, seniority, and all other rights and benefits while an employee is quarantined ;
- Information dissemination and training about COVID-19 prevention, symptoms and workplace rights in languages and formats accessible to workers;
- Support to nonprofit organizations that serve workers in low-wage industries to help educate and train workers, and to disseminate information, sanitation materials and PPE;

- Collaborations (i.e. MOUs) with local Public Health Departments to ensure consistency in regulations, recommendations, implementation, and reporting; and
 - Enhanced retaliation and whistleblower protections for workers who report violations. Guidance can be found in sections [6310](#) and [6311](#) of California's Labor Code, which prohibits retaliation against an employee for making health and safety complaints to their employer, their employer's representative and/or the government.
3. **Develop and foster ongoing relationships with worker health and safety organizations.** (See [Ongoing Engagement](#), above.)
 4. **Ensure COVID-19 testing and treatment is widely available in all communities:** COVID-19 testing and treatment must be made available to all workers, especially those who are deemed "essential workers," regardless of their immigration or health insurance status. DOL and HHS should work with rural health departments, community and migrant health centers, hospitals and nonprofit organizations to fund and otherwise support testing and ensure that workers in rural areas have access to treatment, when needed, regardless of insurance status.
 5. **Prioritize workers in so-called "essential" low-wage industries for vaccine allocation and distribution:** Workers in "essential" industries, many of whom earn low-wages, should be prioritized for vaccine allocation, especially as they are disproportionately BIPOC and immigrant workers. A vaccine allocation and distribution strategy should be comprehensive, innovative and developed in partnership with community members and workers' advocates to ensure that this community's access is maximized. It must address the social determinants of health for workers, ensure the provision of information in low-literacy and multilingual formats and engage community organizations and advocates as messengers and partners. The vaccine must be available at no-cost for uninsured individuals, regardless of ability to pay or immigration status. Most importantly, the availability of the vaccine to low-wage workers should not force workers to choose between getting the vaccine or facing termination.
 6. **Immediately reverse measures that put meat packing and poultry plant workers at heightened risk of injury, illness and death:**
 - Repeal the previous administration's [COVID-19 Executive Order on Meatpacking and Poultry plants](#);
 - Halt the USDA from issuing any new waivers to poultry plants to increase line speeds that exceed requirements of the 2014 [rule](#);
 - Revoke line-speed waivers given since September 2019; and
 - Halt implementation of the removal of line speed caps to swine slaughter plants.
 7. **Ensure that workers who speak up are protected against retaliation:**
 - Follow the recommendations of this [report](#) by the DOL Office of Inspector General (Office of Audit) entitled, "COVID 19: OSHA Needs to Improve its Handling of Whistleblower Complaints during the Pandemic," including fill all positions that are vacant and increase the number of inspectors to handle federal

whistleblower claims. OSHA should create a **COVID Triage** process to expedite COVID-specific retaliation complaints that can include a more efficient caseload management plan to evenly distribute caseload across all regions;

- Engage in vigorous protection and defense of whistleblowers who report dangerous workplace conditions, including those that threaten exposure to COVID-19; and
- Make clear that employers who use workers' immigration status as a means to silence their complaints and retaliate against their assertion of workplace rights are violating the law and ensure robust enforcement against such violations. (See [*Immigrant Workers' Rights*](#), above.)

8. Issue **immediate guidance on OSHA's [Right to Refuse](#) dangerous work**. This "right" is difficult to access without clarifying and strengthening interpretive guidance. Such guidance must also encourage states to allow workers to receive UI benefits when they are fired for refusing dangerous work.
9. **Expand and prioritize funding for worker leadership development and training programs such as the OSHA [Harwood training grants](#)** to community-based organizations, worker centers and unions to develop a network of worker leaders who are knowledgeable in OSHA rights and hazard identification. These worker leaders can serve as peer educators and provide training and education on workers' health and safety rights and job hazards, especially to BIPOC and immigrant workers.
10. **Reinstitute federal tracking of changes in states' workers compensation programs;** appoint a national commission to study the workers' compensation system; and establish minimum standards that would trigger increased federal oversight if workers' compensation programs fail to meet them. Communicate the importance of ensuring that workers who contract COVID-19 while working receive the workers' compensation benefits they deserve, including by messaging support for state legislation that provides a presumption of coverage for essential workers who contract or have contracted COVID-19.
11. **Make workers central to a planned and detailed system of screening, testing, contact tracing and epidemiological surveillance by:**
 - Funding and coordinating with local and state health authorities to ensure that workers have free, accessible, reliable and rapid COVID-19 testing;
 - Coordinating public health surveillance for COVID-19 at all levels that includes collection of information about occupation, industry, and employment at the time of disease onset as well as race and ethnicity;
 - Routinely reporting on patterns of COVID-19 by occupation and industry to identify high risk worker groups; and
 - Engaging and funding community-based organizations and unions to reach those at greatest risk of COVID-19 in order to educate and help them access vaccines.

12. Regulate the Temporary Staffing Industry and Host Employers:

- OSHA should ensure workers and worker representatives are included in the OSHA [Alliance](#) with the American Staffing Association;
- Incorporate specific temporary worker reforms [proposed in August 2013](#) by National COSH;
- Require staffing agencies and host employers to keep OSHA 300 logs; and
- Increase OSHA enforcement in food processing, recycling, warehousing and other essential and high-hazard industries where temp staffing is prevalent and injury rates are highest.

13. Reinstate the “Volks Rule,” which the previous administration [repealed](#), removing the requirement for employers to make and maintain accurate records of recordable injuries and illnesses.

Longer-Term Priorities

- 1. Advocate for a [private right of action](#) to enforce the OSH Act** to empower workers to address serious workplace health and safety hazards and help enforce OSHA standards.
- 2. Advocate to Congress to strengthen OSHA 11c whistleblower protections** to protect and encourage workers’ ability to report hazardous conditions and non-compliance with safety standards, including: extending the statute of limitations from 30-days to 1 year, creating a private right of action, applying a “contributing factor” rather than “but for” causation standard, establishing a rebuttable presumption of retaliation when an adverse action occurs within 90 days of the protected activity, and otherwise modernizing the standard to be consistent with other model whistleblower laws.
- 3. Advocate for legislation to address the impact of COVID-19:** Congress should pass a COVID-19 relief package that extends access to benefits for all essential workers, including extending and expanding paid sick and family leave regardless of employer size, premium pay for essential workers and expanded unemployment benefits.
- 4. Adopt strong day labor and temporary worker protections.** (*See [Job Quality](#), below.*)
- 5. Address the harmful impacts of climate change on worker health and safety, while creating jobs and economic benefits for those most impacted:**
 - Invest in infrastructure and adaptation activities that use the 4G’s: green products; green production methods; green, healthy and safe jobs with fair wages; and green communities;
 - Ensure a just transition for workers adversely affected by transitioning to a sustainable environmental economy including job training, economic and career support; and
 - Develop protections for workers impacted by climate change including an OSHA federal heat standard, such as those in the [Asuncion Valdivia Heat Illness and Fatality Prevention Act](#), as well as protections for workers involved in disaster response and cleanup efforts.

IV. Job Quality

Low-wage workers, who are disproportionately BIPOC and immigrants, often work in the most demanding jobs and are treated without basic respect and dignity. These workers do not earn a living wage in many parts of the country, partly because the abysmally low federal minimum wage lags far behind the cost of living. Sub-minimum wages for tipped workers, youth and people with disabilities deny even that inadequate wage floor. Because of exemptions rooted in structural racism, agricultural and domestic workers are not entitled to overtime compensation under federal law no matter how many hours they work.

The increasingly fissured and contingent nature of work, in which many workers are contracted out through staffing agencies or misclassified as independent contractors, places an ever-larger segment of the workforce in a netherworld where they are denied many legal rights and safety protections. These workers often find it difficult to hold anyone accountable for mistreatment because of legal uncertainty about who employs them or an inability to locate their employer(s).

Finally, the unavailability of paid sick and family leave, as well as the lack of uniform standards and exclusions of workers from unemployment insurance, create gaping holes in the safety net for workers who get sick. The pandemic has demonstrated just how many workers are at risk of falling through those holes.

Day 1 Priorities

1. **Raise the Minimum Wage for Federal Workers:** Raise the minimum wage for federal employees and all employees of employers who work on federal contracts, including all employees of subcontractors, to \$15/hour, with automatic annual increases for cost of living, and accounting for geographic differences.
2. **Eliminate Sub-minimum Wages for Federal Workers:** Cease awarding federal contracts to any employers who pay sub-minimum wages. Issue a public statement recognizing the racist origins of the tipped wage and supporting amendment of the FLSA to eliminate the sub-minimum wage for tipped and youth workers and workers with disabilities.
3. **Reinstate the 80-20 Rule for Tipped Workers:** The DOL should reinstate the Obama administration clarification of the field operations handbook, (Wage and Hour Opinion Letter “FLSA2009-23,”) explaining that an employer can only take a tip credit if the worker does 80% of their work in front of customers.
4. **Recognize and remedy the racist roots of the FLSA’s exclusions of agricultural and domestic workers:** Issue a statement critiquing these exemptions, supporting the [Fairness for Farm Workers Act](#) and the [Domestic Workers’ Bill of Rights](#), as well as updating regulations for H-2A and H-2B visa programs to require overtime pay.

- 5. Regulate the Temporary Staffing Industry and Host Employers:** To ensure equal pay for equal work and a pathway to permanent jobs, the Biden/Harris Administration should:
- Have DOL conduct a study of employment outcomes of temporary staffing agencies and the historical use of conversion fees per [Senator Mark Warner's report](#);
 - Ban non-compete agreements, including conversion fees, in federal contracts; and
 - Authorize a GAO study on the federal government's use of staffing agencies and private subcontractors, including attention to wages, benefits, length of employment, collective bargaining rights, agency markup and quality of services provided.
- 6. Strengthen Joint Employer Status:** Revoke the regulations issued by the previous administration's [DOL](#) and [NLRB](#) and reinstate and strengthen Obama Administration guidance on joint employment.
- 7. Drive high road employment practices within the government by:**
- Creating a White House Procurement-for-the-Public Good Coordinator and Office within the DOL to coordinate and implement the program;
 - Reorganizing DOL's prevailing wage determination and enforcement efforts into a single office;
 - Appointing chief contracting compliance officers (to include labor issues) at each contracting agency;
 - Guaranteeing workforce continuity when federal contracts change hands by reinstating and strengthening President Obama's 2009 Worker Retention Executive Order ([EO 13495](#));
 - Improving IT systems across agencies to track the federal government's contracted workforce and federal labor enforcement activities;
 - Appropriating sufficient funds to support and staff these efforts;
 - Signing an Executive Order requiring federal contractors to maintain a just cause standard for termination of employees on federal contracts; and
 - Supporting long-term change towards a Just Cause Termination Standard while moving away from at-will employment. (See [Worker Organizing](#), above.)
- 8. Raise the Overtime Salary Threshold:** Reform overtime protections by publishing a Notice of Proposed Rulemaking to raise the overtime salary threshold to the amount proposed by the Obama DOL or higher, and include a rigorous "duties test."
- 9. Strengthen Enforcement:** In addition to suggestions relating to infrastructure and capacity, the DOL including OSHA, EEOC and NLRB should have stronger enforcement mechanisms, including strong DOL Wage & Hour guidance on pursuing liquidated damages, including in non-filed cases, as well as a directive to determine, in all cases, whether back pay should be calculated for a 3-year period. The DOL should use [hot goods authority](#) where wage theft persists. (See [Immigrant Workers' Rights](#), above.)
- 10. Protect Misclassified Workers:** Ensure all workers, including gig workers, who are misclassified as independent contractors are entitled to labor protections, including by

withdrawing the proposed [DOL rule](#) on employee vs. independent contractor classification. Reinstate the Obama-era [guidance](#) on misclassification, and initiate new guidance on employee classification under the FLSA that adopts the ABC test, reflects the exacerbation of the problem over the past several years and more aggressively pursues enforcement against employers who attempt to skirt their liability by misclassifying their employees. Alternatively, if necessary, support a legislative amendment to accomplish this goal.

11. Prioritize Enforcement Actions Where Workers Are Subject to Forced Arbitration:

DOL should rescind the [August 10, 2018 enforcement memorandum](#), which [sent a message](#) to attorneys and to employers that the agency would avoid enforcement actions where employers forced workers to sign arbitration agreements. This memorandum should be replaced with guidance encouraging DOL investigators and attorneys to actively pursue cases where forced arbitration clauses block workers from privately enforcing their rights.

12. Comprehensive Paid Sick and Safety Leave:

- Require paid leave for federal contractors, as this will send a strong message of support for the concept of paid leave independent of the pandemic; and
- Direct WHD to do a comprehensive review and evaluation of efforts around President Obama's [Executive Order 13706](#), which grants federal contractors the right to paid sick time, including enforcement actions taken, complaints received, the need for additional outreach and education, and opportunities for expansion.

13. Support an Executive Order that would temporarily compensate workers for wages lost due to COVID-19, pending a Congressional stimulus package: It is crucial to workers, communities and the economy that Congress extend PUA and other federal benefits relating to COVID-19. However low-wage workers cannot afford to continue without income, therefore an Executive Order granting temporary financial assistance for low-wage workers while Congress determines the next stimulus package is an essential stop gap measure.

14. Modernize the Unemployment System: bolster and modernize the safety net for jobless workers by appointing a Senior Official to be in charge of repairing the Unemployment system by:

- Shifting focus from benefit overpayment by states to erroneous denials;
- Institute corrective plans and sanctions for state agencies that are failing to provide UI benefits to entitled workers;
- Launching a new initiative focused on timely payment of benefits and ensure that all qualified applicants receive their benefits;
- Placing accessible and well-trained enforcement staff in regional offices;
- Enacting stronger regulations as well as new performance standards for online systems, with a budget of at least \$2 billion for technical repairs;
- Reviewing the challenges facing states including inadequate staffing, technology and financial resources, as well as lack of guidance; and

- Providing states with guidance on ensuring accessibility for people with disabilities, workers who speak other languages, and other workers who face challenges in accessing these benefits to ensure that states are ensuring access to claimants who need these accommodations, particularly those with disabilities who are entitled to full and equal access to state benefits under the ADA.

Longer-Term Priorities

- 1. Advocate for increased funding to DOL including OSHA, EEOC and NLRB to increase their enforcement capacity and allow for increased grants to worker organizations. (See [Ongoing Engagement](#), above.)**
- 2. Support the following proposals that require federal legislation to improve job quality for all workers:**
 - Raise the federal minimum wage to at least \$15 an hour, phasing out all subminimum wages for tipped, youth and workers with disabilities;
 - Eliminate existing exclusions from overtime protections by supporting the [Fairness for Farm Workers Act](#) and the [Domestic Workers' Bill of Rights](#);
 - Support the [POWER Act](#), which will expand immigration protections for workers alleging labor violations;
 - Strongly advocate for immediate passage of a permanent paid sick and safe time law like the [Healthy Families Act](#), which should be amended to: guarantee paid sick time regardless of employer size; workers who work for more than one employer; misclassified workers such as rideshare drivers, domestic workers, workers hired via apps; and additional paid time off that is not deducted from parental leave for pregnant workers who take time off to maintain a healthy pregnancy. Paid sick and safe time fights the spread of disease, provides leave to address the impacts of domestic and sexual violence, and ensures no worker has to choose between their health and their economic security;
 - Regulate the temporary staffing industry as proposed in the [Restoring Worker Power Act](#);
 - Strengthen joint employer standards, as in the [Worker Flexibility and Small Business Protection Act](#);
 - Bolster and modernize the UI system by advocating for: the extension of pandemic relief, including ensuring all workers who were eligible for Pandemic Unemployment Assistance, such as independent contractors, are eligible for regular UI; that workers who quit their jobs to protect themselves or were fired for refusing to work under dangerous conditions can receive UI; and expand UI benefits for undocumented workers by allowing workers to receive benefits through their ITINs or other method; and
 - Support legislation similar to 2019's [Forced Arbitration Injustice Repeal Act](#)" ("FAIR Act"): to prohibit pre-dispute arbitration agreements that force arbitration of future employment, consumer, antitrust, or civil rights disputes; and prohibit agreements and practices that interfere with the rights of individuals, workers, and small businesses to participate in a joint, class, or collective action related to an employment, consumer, antitrust, or civil rights dispute.

V. Discrimination

Discrimination based on race, sex, national origin, religion, disability, and age overlap with all issues workers confront and must be addressed at every intersection. The Biden/Harris Administration must begin to undo the harm done by the Trump Administration and also act proactively to protect marginalized workers - recognizing that wage theft, denial of leave, forced overtime, lack of paid leave, and other workplace violations are forms of unlawful discrimination and have disproportionate and discriminatory impacts on BIPOC workers as well as immigrants, women, members of the LGBTQ+ community, people with disabilities, criminal records and other marginalized statuses.

Day 1 Priorities

1. **Promptly reverse the previous administration's [Executive Order prohibiting racial justice and sensitivity training for federal employees and grantees](#) and develop racial justice and trauma informed training materials, encourage employers to reinstate their Diversity Employment Initiative programs, and cease enforcement actions targeting companies with initiatives that are designed to increase the hiring of Black employees.**
2. **Restart both EEO-1 Component 2 Data Collection and Employment Data Sharing:** The EEOC should resume collecting pay data (EEO-1 Component Data) from employers to address persistent pay disparities against BIPOC, immigrants, women and other workers, and grant state enforcement agencies access to the data collected from employers within their jurisdictions. The EEOC should also restore state enforcement agencies' access to important data from employers about the demographic make-up of their workforces, which is critical to state enforcement agencies as they advance their anti-discrimination missions.
3. **Extend protections to immigrant, migrant and undocumented workers**, including expanding the DOL-DHS MOU, and improving timeframes for U and T visa certifications, as well as access to affirmative relief to protect workers from retaliation. (*See [Immigrant Workers' Rights](#), above.*)
4. **Commit to full review of federal hiring and contracting practices. Create incentives for high road practices**, such as a \$15/hr minimum wage, health coverage, paid sick and family leave, union neutrality. Strengthen Office of Federal Contract Compliance Programs' enforcement to address discrimination by federal contractors.
5. **Recognize the disparate impact the lack of essential worker protections have on BIPOC and immigrant workers.** Workers of color are overrepresented in low-wage, essential jobs. COVID-19 has had a disproportionately devastating effect on communities of color. Protections for essential workers are a racial justice issue. The Biden/Harris Administration should promptly take all appropriate action to mandate

safety protocols, comprehensive sick leave, hazard pay and healthcare for essential workers. (See [Health & Safety](#), above.)

6. **Commit to vigorous enforcement of existing criminal records [guidance](#) and strengthening such protections going forward.** Send a clear message that this is a major priority for the EEOC given the disproportionate impact of overbroad criminal record restrictions in hiring on BIPOC workers and the reduction of job opportunities as a result of COVID-19. Many BIPOC workers with criminal records fear that if and when the job market improves, they will be the last in line to benefit from economic recovery. The Biden/Harris Administration should appoint individuals to the EEOC that would strengthen protections for job applicants with criminal records and review federal job training programs, such as the Job Corps for youth, that are unduly restrictive and limit job opportunities. (See *more recommendations on criminal records at [CLS-Employment-Recommendations](#)*.)
7. **Strengthen enforcement of the Fair Credit Reporting Act to protect low-wage workers from inaccurate criminal background reporting.** In addition to the other difficulties that low-wage workers face in obtaining employment, they often must also overcome the challenge of inaccurate criminal background reporting. Consumer reporting agencies may commit a [variety of errors](#) that have especially deleterious effects for BIPOC workers, including gravely mischaracterizing offenses, reporting offenses committed by an entirely different person and more. Low-wage workers may have difficulty in remedying such violations themselves for lack of resources; thus, a Consumer Financial Protection Bureau under the Biden/Harris Administration should prioritize investigating problematic consumer reporting agencies, recognizing the harm caused by such reporting for low-wage workers and their families.
8. **Develop a process for emergency intervention for workers who are experiencing retaliation or immediate threats in the workplace,** including threats of or actual physical violence or threats to call ICE. Given the increase in hate crimes at work, the EEOC must be viewed as a place to go for quick and effective help.
9. **Evaluate the discriminatory impacts of COVID-19** on BIPOC and immigrant workers, with regard to furloughs, layoffs, rehiring practices and more. These results should be made publicly available to support administrative and legislative efforts for more safe and equitable workplace conditions. (See [Health & Safety](#), above).
10. **Ensure adequate language access to all agencies** by reinvigorating Title VI enforcement, reissuing strong rules via executive order, possibly strengthening [Clinton's EO # 13166](#), auditing agencies for compliance with directives, and raising standards and compliance so enforcement goes beyond a complaint-driven process. This should include affirmative messaging to publicize that persons of all language groups will have access to federal agencies, and ensuring that intake staff have a seamless process for connecting with a language line to provide instant interpretation services.

- 11. Regulate the Temporary Staffing Industry and Host Employers** by requiring staffing and referral agencies, including those that operate as on-line platforms, to report demographic data for temp workers, including those who seek work but are not assigned, on EEO-3 surveys and/or on EEO-1 surveys for their internal employees to combat rampant race discrimination in the industry, especially against Black workers.

Longer-Term Priorities

- 1. Protect Trans & Intersex workers** so they are considered a protected class by the EEOC, via executive order and by strengthening regulations and guidance.
- 2. Clearly establish that a single incident can meet the “severe and pervasive” standard of harassment** in order to expand protections against sexual and gender-based violence in the workplace.
- 3. Increase EEOC resources** to allow for more investigators, especially multilingual investigators, to enable faster investigation time and more thorough investigations.
- 4. Support legislative efforts to lower the employee threshold for Title VII** to include smaller employers. This could ensure protections for domestic workers and other workers who work in isolation or in small workplaces, where some of the most egregious and insidious forms of discrimination and harassment occur.
- 5. Support State Agencies:** In order to strengthen enforcement, the Biden/Harris Administration should prioritize additional resources to under-resourced states and provide incentives to states to establish state DOL, OSHA and EEOC equivalents.
- 6. Ensure consistent enforcement nationally:** in order to make sure EEOC enforcement is effective in all regions of the country, the EEOC should investigate and be transparent about:
 - a. Priorities of the regional offices and why determinations may not be issued;
 - b. How and why filing locations and methods result in different responses and outcomes by regional office;
 - c. Lack of U-visa certification in some regions;
 - d. Language access and physical barriers for migrant workers who are often issued a Notice of Right to Sue letter, without issuing conclusions or trying to settle, due to the inability of the investigator to communicate with the worker; and
 - e. Share data with state agencies pertaining to demographics of workplaces in their state.
- 7. Strengthen protections for migrant workers**, such as by requiring employers to provide family housing for H-2A and other workers for whom employers are required to provide housing and address discrimination in recruitment of migrant workers abroad.
(See [*Temporary Work Visa Programs*](#), below.)

8. **Initiate new protocols at the EEOC to identify misclassified workers** at the point of filing so they are not improperly and unjustly turned away and denied recourse for workplace discrimination and harassment.
9. **Adopt a new forced arbitration policy statement.** The EEOC should adopt a new forced arbitration policy statement that returns to the position articulated in its 1997 policy statement ([rescinded in 2019](#)) that employers' use of forced arbitration clauses for discrimination claims as a condition of employment is contrary to the fundamental principles of the civil rights laws enforced by the EEOC and further indicates that the use of class action waivers is contrary to the fundamental principles of those laws as well.
10. **Incentivize true discrimination prevention programs** over often ineffective training programs that are offered by management side labor law firms by: funding projects by community groups and worker centers; create better tools that are workplace specific and trauma-informed, including bystander intervention techniques; and consider certification processes and incentives to implement better training.
11. **Revamp EEOC website, forms, social media and outreach materials** with consideration of language, cultural, geographic, technological and physical barriers that may prevent workers from accessing it effectively. Partner with community based organizations to ensure that persons of all language groups and geographies have adequate access to EEOC offices. (See [Ongoing Engagement](#), above.)

VI. Temporary Work Visa Programs

Each year there are up to 900,000 migrant workers entering the country with a temporary work visa, each visa with its own rules and requirements. These are workers with H-2A, H-2B, J-1, TN and other work visas. Internationally-recruited workers are subject to a temporary work visa system, (the misleadingly named “guestworker programs,”) that is rife with worker abuses, including fraud, discrimination, economic coercion, and forced labor. These workers can find themselves in difficult situations if they raise a complaint against their employer because their work authorization and visa are attached to their employer. The temporary work visa programs are rooted in historically racist policies.

Over the years, these programs have expanded rapidly but without added protections for workers. The COVID-19 global pandemic has exacerbated the severe problems within the programs: recruitment abuse, weak or non-existent oversight of transportation and housing conditions, and discrimination of both domestic and internationally-recruited workers. Many of these workers have been deemed “essential” workers because they are in the food supply chain. These are workers that tend to work in low-wage industries, such as agriculture, construction, seafood processing, leisure and hospitality, among many others. These workers are predominantly workers of color and many come from impoverished communities in their home countries.

Day 1 Priorities

- 1. Revive and formalize the [Interagency Taskforce](#) on international labor recruitment with representatives from relevant agencies (DOS, DOL, DHS, EEOC and NLRB):**
The Taskforce should seek to address some of the systemic problems in international labor recruitment across industries and promote coherence and enforcement of high standards across visa categories. The DOL should lead the Taskforce to ensure workers' rights are core to the solutions developed.
- 2. Improve Transparency of Temporary Work Visa Programs:** Collect data to monitor international labor recruitment and guide effective policymaking. DHS, DOL, and DOS should collect and share consistent data about non-immigrant visas that authorize employment, including who is recruiting whom, for what jobs, under which terms, wage rates, and on what visas. This data should be made available in real time in a searchable database on a public website that enables workers to ascertain the veracity of a job offer, identify actors in the chain of recruitment, review the terms of employment, and view a visa petition's status. The website should be accessible to workers in multiple languages. The [seasonaljobs.gov](#) platform could readily be revised to make real time data much more available and transparent.
- 3. Resist Lifting the H-2B Cap Without Necessary Reforms to H-2B Program:**
Employers have consistently sought to lift the cap of 66,000 H-2B workers per fiscal year. Continued appropriation riders are likely to vest the authority to lift the cap in the Secretary of Homeland Security in consultation with the Secretary of Labor. DOL OFLC staff have consistently and without binding regulatory authority permitted H-2A and H-2B employers to impose experience requirements on low-skilled ONET Job Zone One positions that require little or no prior training. This makes these jobs unavailable to millions of unemployed entry level persons who might be interested in these jobs which is particularly critical as the post-COVID-19 economy rebuilds. Employment-authorized workers, particularly workers from Black communities are frequently barred from low-skilled jobs in industries such as landscaping by unnecessary criminal background record employment application questions where there is no work related need for such restrictions. Urban areas often have very high unemployment rates while prospective H-2B employers in surrounding suburban areas fail to make positive efforts to recruit unemployed workers. State workforce agencies and DOL could and should work to identify and overcome barriers to employment for these workers. DOL's exclusive recruitment platform for temporary H-2A and H-2B jobs is non-functional as an effective mechanism for recruitment of employment authorized workers.
- 4. Ensure Workers Have Access to Legal Justice.** Because temporary work visas are limited in time and are tied to the employer, workers are at risk of not only losing their jobs but also their legal status in the U.S. if they speak out about workplace abuse. To guard against retaliatory actions by employers, the Administration should take advantage of existing immigration protections to ensure that workers can meaningfully participate in the U.S. justice system. Such protections can include extending workers' visa status and work authorization if they are already in the U.S. at the time they come forward, and

granting workers advance parole to reenter the U.S. to participate in legal proceedings if they have already returned home. In addition, workers who have left the U.S. but have cooperated with a law enforcement investigation into workplace-based crimes, and been approved for U nonimmigrant status as a result, should be permitted to reenter the U.S. via advance parole and be granted deferred action during the duration of their time on the waitlist, just as is allowed of similarly situated workers in the U.S.

5. DOL must revise the H-2A temporary foreign agricultural worker visa regulations in order to undo harmful changes made by the previous administration.

- Undo harmful wage changes in the new [Adverse Effect Wage Rate \(AEWR\) regulation](#), which—according to DOL’s own estimates—will inflict on farmworkers \$170 million per year in wage losses. This final rule is set to go into effect on December 21 and is currently the subject of ongoing litigation;
- USDA must resume the Farm Labor Survey (FLS) and Farm Labor Report, which provide unique and important information, including the data necessary to set the AEWR; and
- Beyond these harmful wage changes, there is currently [another pending H-2A regulation at OMB](#), which is part of a broader overhaul of the H-2A program first proposed in 2019. If that final rule is published and implemented, the Biden/Harris Administration should reverse the harmful changes that will likely be in that final rule.

6. Ensure that J-1 au pairs are not exempted from state and local labor standards.

There is a pending proposed rule by DOS that seeks to preempt au pairs’ eligibility for higher minimum wage law set by the states that the Biden/Harris Administration should oppose and revoke if it is passed.

Longer-Term Priorities

1. Allocate resources to State Workforce Agencies (SWAs) to ensure they provide proper oversight of the temporary work visa programs throughout the country.

There is currently no meaningful oversight or enforcement of the terms of recruitment or employment in temporary work visa programs. Employers consistently use unlawful job qualifications to avoid hiring domestic workers. Employers also frequently offer working conditions that are unlawful, such as providing housing for H-2A workers that does not meet legal standards. DOL and SWAs should prioritize enforcement of provisions of the Immigration and Naturalization Act designed to ensure that employers are not using temporary work visa programs for the purpose of hiring a workforce they can exploit. DOL should solicit feedback from worker advocates on cost- and time- efficient methods advocates use to find noncompliance. Guidance should be issued to SWAs and DOL to prioritize reviewing job orders for illegal job terms. In the longer term, DOL should work to ensure accountability in the program through random audits, worker interviews, and by exercising its authority to bar bad actors with multiple findings of violations from participating in temporary visa programs. DOL and the SWAs need increased funding in order to exercise meaningful oversight of temporary visa programs. The programs have expanded massively over the past several years, but funding remains stagnant, meaning

that staff have virtually no time to serve as anything other than a rubber stamp for visa applicants.

2. **Ensure fair recruitment and data transparency for all participants**, including direct employers, agencies and any agents in the temporary work visa programs.
3. **[Recognize the J-1 cultural exchange program as a work program to be overseen by DOL](#)**. The DOL should collaborate with the DOS to oversee the work-related aspects of the J-1 visa program, jointly assess the impact of the program on the domestic workforce and implement regulations to protect all workers and raise labor standards for impacted industries. The J-1 Exchange Visitor Program was not designed to import foreign labor and fill labor shortages, although many of the current program categories created via DOS regulations authorize employment. As a result, today the J-1 visa is routinely used as a temporary work visa. DOL must therefore evaluate the J-1 program's impact on the labor market and play an oversight role as it does with other temporary work visa programs.
4. **Support the elimination of the exclusion of H-2A workers from the Migrant and Seasonal Agricultural Worker Protection Act** which is the key federal legislation that protects the working conditions of agricultural workers in the U.S. However, H-2A workers are excluded from its protections. This makes it much more difficult for H-2A workers to enforce their rights in U.S. courts. This Administration should support the legislative elimination of this exclusion.

APPENDIX A

Participating Organizations

1	A Better Balance
2	Adelante Alabama Worker Center
3	Adelante Mujeres (individual attorney)
4	Adhikaar
5	Advocates for Basic Legal Equality (ABLE)
6	ALIGN: The Alliance for a Greater New York
7	Arise Chicago
8	Arriba! Las Vegas
9	Awood Center
10	Bet Tzedek Legal Services
11	Border Workers United
12	Brandworkers
13	Brazilian Women's Group
14	Brockton Workers Alliance
15	CASA de Maryland
16	Casa Latina
17	Catholic Charities
18	Center for Workers Rights
19	Central American Resource Center (CARECEN) - Los Angeles
20	Centro de los Derechos del Migrante (CDM)
21	Centro de Trabajadores en la Lucha (CTUL)
22	Centro Laboral de Graton / Graton Day labor Center
23	Chicago Workers Collaborative
24	Chinese Progressive Association
25	CLEAN Carwash Campaign
26	Columbia Legal Services
27	Comite de Apoyo a los Trabajadores Agricolas (CATA)
28	Community Legal Services, Philadelphia
29	CRLA Foundation
30	Equal Justice Center

31	Equal Rights Advocates
32	Fair Employment Project
33	Fair Work Center
34	Farmworker and Landscaper Advocacy Project
35	Farmworker Association of Florida
36	Farmworker Justice
37	Filipino Advocates for Justice (FAJ)
38	Filipino Community Center (FCC)
39	Food Chain Workers Alliance
40	Garment Worker Center
41	Gig Workers Rising
42	Greater Boston Legal Services (GBLS)
43	Immigrant Alliance for Justice and Equity
44	Institute of Popular Education of Southern California (IDEPSCA)
45	Interfaith Workers Justice (IWJ)
46	Justice at Work
47	Justice at Work PA
48	Justice in Motion
49	Koreatown Immigrant Workers Alliance (KIWA)
50	La Colmena
51	LatinoJustice PRLDEF
52	Legal Action of Wisconsin
53	Legal Aid at Work
54	Los Angeles Black Worker Center
55	Make the Road New York
56	Many Languages, One Voice (MLOV)
57	Mexican American Legal Defense and Educational Fund (MALDEF)
58	Michigan Immigrant Rights Center (MIRC)
59	Migrant Justice
60	Mississippi Resiste
61	Mississippi Workers' Center for Human Rights
62	Muslim Advocates
63	National Center for Law and Economic Justice (NCLEJ)

64	National COSH
65	National Day Laborer Organizing Network (NDLON)
66	National Domestic Workers' Alliance (NDWA)
67	National Immigration Law Center (NILC)
68	New Immigrant Community Empowerment (NICE)
69	New Labor
70	New Mexico Center on Law and Poverty
71	New Orleans Worker Center for Racial Justice (NOWCRJ)
72	New York Communities for Change (NYCC)
73	North Carolina Justice Center
74	Northwest Justice Project
75	Northwest Workers' Justice Project
76	ONE DC
77	One Fair Wage Coalition
78	Oregon Law Center
79	Pineros y Campesinos Unidos del Noroeste (PCUN) and Centro de Servicios para Campesinos
80	Public Citizen
81	Public Justice
82	Public Justice Center
83	Raise The Floor Alliance
84	Resilience Force
85	Rights and Democracy Institute of Vermont and New Hampshire
86	San Antonio Stands (SA Stands)
87	Santa Clara County Wage Theft Coalition
88	Shriver Center on Poverty Law
89	Somos Un Pueblo Unido (Somos)
90	Southern Maine Workers' Center
91	Southern Minnesota Regional Legal Services
92	Southern Poverty Law Center (SPLC)
93	Street Level Health Project & Oakland Workers Collective
94	Temp Worker Justice
95	Tompkins County Workers Center
96	Venceremos

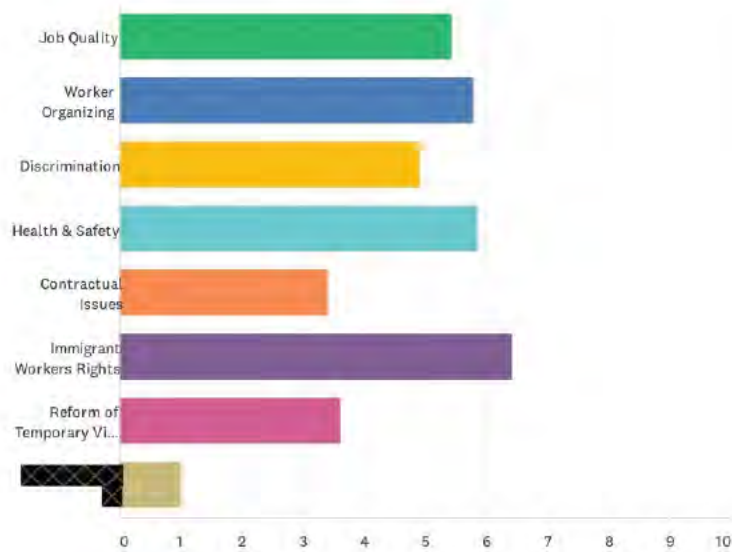
97	Voz Portland
98	WeCount!
99	Western New York COSH Worker Center
100	Western North Carolina Workers Center
101	Wind of the Spirit, Immigrant Resource Center
102	Worker Justice Center of New York
103	Worker Justice Wisconsin
104	Worker's Justice Project / Proyecto Justicia Laboral
105	Workers Defense Project / Proyecto Defensa Laboral
106	Workers Dignity / Dignidad Obrera
107	Workers Rights Institute
108	Workers' Project
109	Working Washington
110	Workplace Fairness
111	Workplace Justice Project at Loyola Law Clinic
112	Worksafe

APPENDIX B

Summary of Survey Results

Q2 Please rank the below issue areas in order of their importance to your organization in the next 4 years.

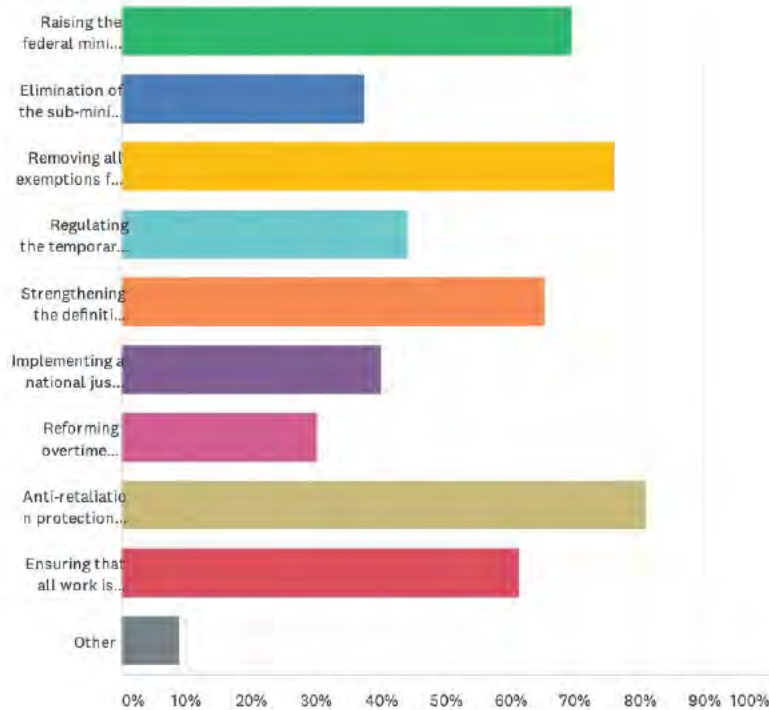
Answered: 122 Skipped: 0



	1	2	3	4	5	6	7	8	N/A	TOTAL	SCORE
Job Quality	15.57% 19	15.57% 19	17.21% 21	15.57% 19	20.49% 25	7.38% 9	5.74% 7	0.00% 0	2.46% 3	122	5.44
Worker Organizing	21.31% 26	19.67% 24	18.03% 22	14.75% 18	9.02% 11	9.02% 11	5.74% 7	0.00% 0	2.46% 3	122	5.79
Discrimination	9.02% 11	6.56% 8	15.57% 19	25.41% 31	22.95% 28	13.11% 16	4.92% 6	0.00% 0	2.46% 3	122	4.92
Health & Safety	8.20% 10	28.69% 35	24.59% 30	18.85% 23	13.11% 16	4.92% 6	0.00% 0	0.00% 0	1.64% 2	122	5.85
Contractual Issues	2.46% 3	1.64% 2	4.92% 6	10.66% 13	13.11% 16	28.69% 35	29.51% 36	0.00% 0	9.02% 11	122	3.42
Immigrant Workers Rights	36.89% 45	20.49% 25	15.57% 19	7.38% 9	11.48% 14	4.92% 6	1.64% 2	0.00% 0	1.64% 2	122	6.43
Reform of Temporary Visa Program	5.74% 7	6.56% 8	3.28% 4	5.74% 7	6.56% 8	21.31% 26	32.79% 40	0.00% 0	18.03% 22	122	3.61
Placeholder	0.00% 0	0.00% 0	0.00% 0	0.00% 0	0.00% 0	0.00% 0	0.00% 0	100.00% 1	0.00% 0	1	1.00

Q3 JOB QUALITY: Job quality has severely decreased during the last four years and many decades before. Below are some of the issues that need to be urgently addressed. Please check the issue(s) that are most important to your organization.

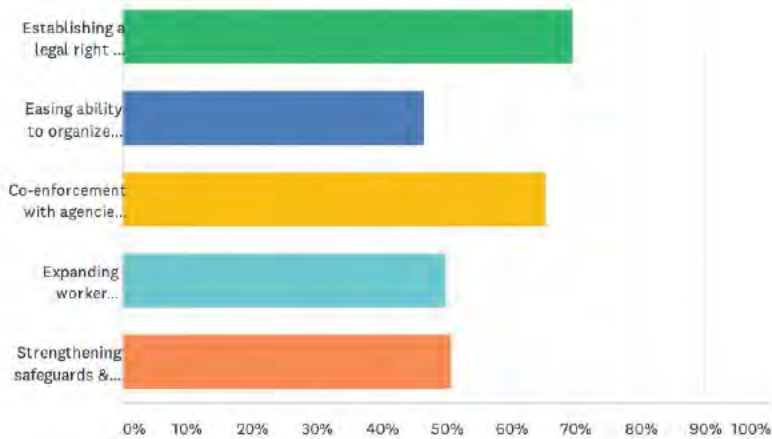
Answered: 122 Skipped: 0



ANSWER CHOICES	RESPONSES	
Raising the federal minimum wage to a living wage	69.67%	85
Elimination of the sub-minimum wages for tipped and youth workers, and workers with disabilities	37.70%	46
Removing all exemptions from labor laws that leave agricultural and domestic workers and other excluded workers without basic protections like overtime and the right to organize	76.23%	93
Regulating the temporary staffing industry and companies that use temp staffing, including equal pay for equal work and a path to permanent jobs;	44.26%	54
Strengthening the definition of joint employment, who is employed, and who is responsible for wages owed	65.57%	80
Implementing a national just cause termination standard and an end of at-will employment	40.16%	49
Reforming overtime protections, including raising the salary exemption threshold	30.33%	37
Anti-retaliation protections need to be strengthened, including ensuring that federal agencies including DOL, EEOC, and NLRB vigorously enforce the law by going after liquidated damages, seeking injunctions to prevent retaliation and to get workers' jobs back if they are fired in retaliation.	81.15%	99
Ensuring that all work is protected whether workers are categorized as employees or not, including clear standards for determining "employment" under ABC tests and repealing whatever last-minute interpretive changes DOL makes to the definition of employ under FLSA.	61.48%	75
Other	9.02%	11
Total Respondents: 122		

Q4 WORKER ORGANIZING: Strong worker organizations are the backbone of all efforts for safety and dignity at work. Below are some of the issues that need to be urgently addressed. Please check the issues that are most important to your organization.

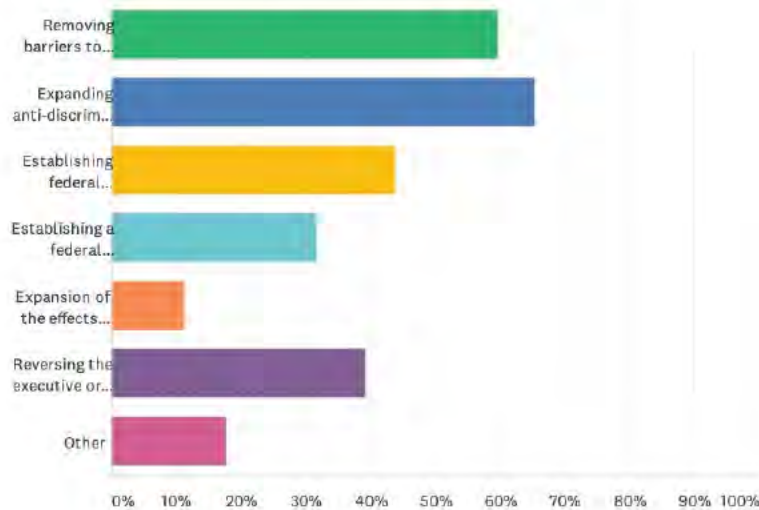
Answered: 122 Skipped: 0



ANSWER CHOICES	RESPONSES	
Establishing a legal right for farmworkers, domestic workers, and other excluded workers to organize	69.67%	85
Easing ability to organize collectively to win unionization - addressing barriers such as employer interference in elections with solutions such as card check	46.72%	57
Co-enforcement with agencies, such as DOL, (including OSHA, EEOC,) to form enforcement committees with workers representation, and monetary grants to worker centers to engage in co-enforcement activities	65.57%	80
Expanding worker protections in the NLRA, including overriding "right to work" laws, expanding the right to strike/boycott, overruling Epic Systems, among other things	50.00%	61
Strengthening safeguards & protections for worker centers to reduce specious attack by employer and corporations	50.82%	62
Total Respondents: 122		

Q5 DISCRIMINATION: Even in non-pandemic times, discrimination robs workers of a safe and fair workplace. Below are some of the issues that need to be urgently addressed. Please check the issues that are most important to your organization.

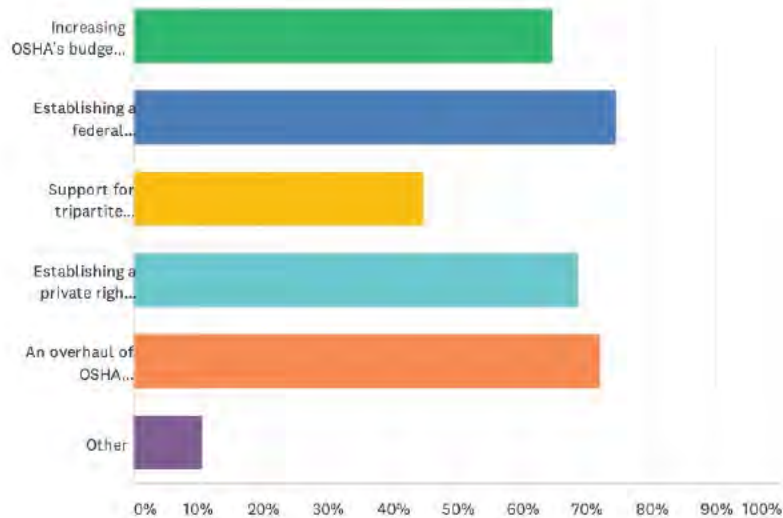
Answered: 107 Skipped: 15



ANSWER CHOICES	RESPONSES	
Removing barriers to employment for people with criminal records;	59.81%	64
Expanding anti-discrimination and anti-harassment laws to cover independent contractors	65.42%	70
Establishing federal protections for trans and intersex workers	43.93%	47
Establishing a federal baseline for equitable hiring practices	31.78%	34
Expansion of the effects test under the ADEA	11.21%	12
Reversing the executive order halting diversity and inclusion training at DOJ, other federal agencies and contracting	39.25%	42
Other	17.76%	19
Total Respondents: 107		

Q6 HEALTH & SAFETY: Low-wage workers do not have adequate safety and health protections on the job, a truth laid bare by the pandemic. Below are some of the issues that need to be urgently addressed. Please check the issue(s) that are most important to your organization.

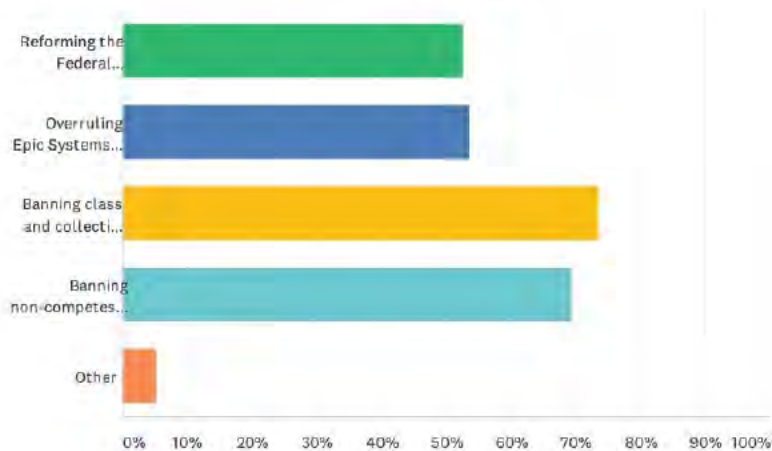
Answered: 122 Skipped: 0



ANSWER CHOICES	RESPONSES	
Increasing OSHA's budget, especially increasing the number of inspectors, and broadening its mandate	64.75%	79
Establishing a federal infectious disease standard to deal with COVID-19 and all future airborne infectious diseases	74.59%	91
Support for tripartite health and safety councils with adequate worker representation	45.08%	55
Establishing a private right of action to enforce violations of the OSH Act	68.85%	84
An overhaul of OSHA whistleblower protections including a private right of action for safety and health reporting retaliation	72.13%	88
Other	10.66%	13
Total Respondents: 122		

Q7 CONTRACTUAL ISSUES: Workers are expected to sign away many rights to get a job, including the right to take their employer to court due to forced arbitration, contractually shortened statutes of limitation and the right to take their experience to a new job due to non-compete agreements. Please check the issue(s) that are most important to your organization.

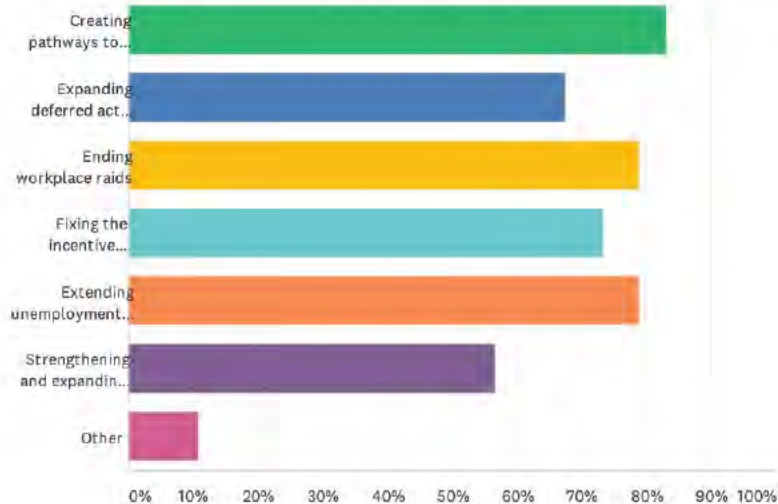
Answered: 95 Skipped: 27



ANSWER CHOICES	RESPONSES	
Reforming the Federal Arbitration Act	52.63%	50
Overruling Epic Systems, which allows employers to ban collective arbitration by employees	53.68%	51
Banning class and collective action waivers	73.68%	70
Banning non-competes for low-wage workers	69.47%	66
Other	5.26%	5
Total Respondents: 95		

Q8 IMMIGRANT WORKERS: Workers who are immigrants, whether lawful non-citizens or undocumented, need additional protections to ensure that their workplace rights are respected and enforced. Please check the issue(s) that are most important to your organization.

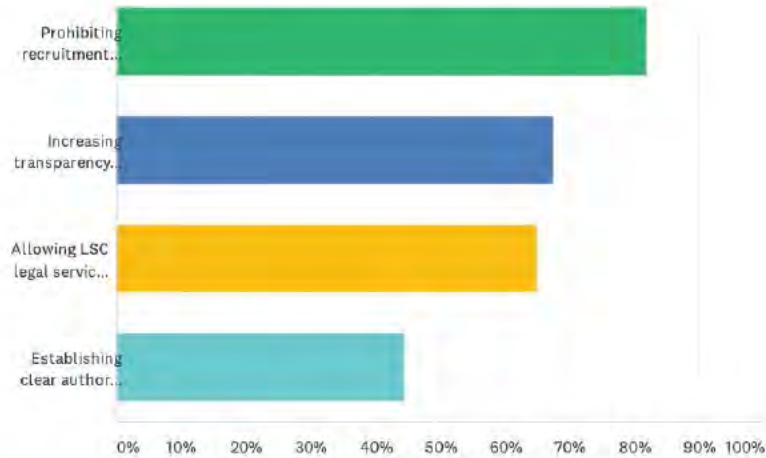
Answered: 120 Skipped: 2



ANSWER CHOICES	RESPONSES	
Creating pathways to citizenship (including expanding U-Visas as intermediate steps) for essential workers, workers involved in labor disputes, DACA and TPS holders, and temporary visa holders	83.33%	100
Expanding deferred action programs to cover workers involved in labor disputes, families of DACA recipients, and others	67.50%	81
Ending workplace raids	79.17%	95
Fixing the incentive created by Hoffman Plastics, which prevents undocumented workers from getting backpay under the NLRA;	73.33%	88
Extending unemployment insurance and other benefits such as EITC to all workers, including undocumented workers and ITIN filers	79.17%	95
Strengthening and expanding the MOU between USDOL, ICE, and other agencies.	56.67%	68
Other	10.83%	13
Total Respondents: 120		

Q9 REFORM TEMPORARY VISA PROGRAMS: The existing structure of the temporary visa program is rife with exploitation and abuse, and is in need of reform. Please check the issue(s) that are most important to your organization.

Answered: 83 Skipped: 39



ANSWER CHOICES	RESPONSES	
Prohibiting recruitment fees, discrimination, and retaliation from recruiters and employers	81.93%	68
Increasing transparency and clear joint accountability for agencies, intermediaries, and worksite employers	67.47%	56
Allowing LSC legal services to represent all temporary visa holders	65.06%	54
Establishing clear authority for the DOL to do rule making and to enforce the three-fourths guarantee rule, which guarantees H-2A and H-2B workers ¾ of the hours promised under their contract.	44.58%	37
Total Respondents: 83		

From: [Johnda Bentley](#)
To: [Jonnee Bentley](#)
Cc: [Easley, Brian West](#)
Subject: Reminder: Virtual Platform Training
Date: Monday, February 22, 2021 11:44:21 AM
Attachments: [Speaker Release - GOVT P&P.pdf](#)
[Speaker Release - P&P.pdf](#)
[VisionCreative_VirtualPresenterBestPractices - Copy.pdf](#)
[CONVENE_PresenterQuickStartGuide_ControlRoom - Copy.pdf](#)
[CONVENE-Testing&Troubleshooting.pdf](#)
[Midwinter Meeting Speaker Tips and Guidance.pdf](#)

Dear P&P Midwinter Speakers,

This is a reminder that the **Convene virtual meeting platform training** will be **tomorrow, February 23, at 2:00 pm EST**. We strongly encourage all speakers and moderators to attend this training to familiarize yourself with the platform ahead of the meeting.

Thank you,

P&P Program Co-Chairs Jonnee Bentley (Union) and Brian Easley (Management)

----- Forwarded message -----

From: Brad Hoffman <Brad.Hoffman@americanbar.org>
Date: Tue, Feb 9, 2021 at 5:56 PM
Subject: ABA Committee on Practice & Procedure Under the NLRA 2021 Midwinter Meeting: SPEAKER CONFIRMATION
To: Brad Hoffman <Brad.Hoffman@americanbar.org>

Dear Midwinter Meeting Speaker:

Thank you for agreeing to speak at the ABA Section of Labor and Employment Law's Committee on Practice & Procedure Under the NLRA 2021 Midwinter Meeting, which will be presented virtually on March 3-5, 2021.

Meeting Registration

All speakers are required to register for the Midwinter Meeting. Please register online at

(b) (6).

Virtual Meeting Platform Speaker/Panelist Training

A speaker training session for the Convene virtual meeting platform will be presented on **Tuesday, February 23 at 2:00 pm EST**. If you are unable to attend the session, you may view the recording at your convenience.

After you have attended the training session, you will be provided a password so you can access the platform to practice with your co-panelist(s). For your reference, please find attached the following presenter information:

1. **Convene: Presenter Quick Start Guide**

2. [Convene: Testing & Troubleshooting](#)
3. [Virtual Presenter Quick Tips](#)
4. [Midwinter Meeting Speaker Tips and Guidance](#)

Written Materials

The deadline for submission of papers is **Friday, February 19, 2021**. Please forward your materials to laborlawpapers@americanbar.org and include "P&P Committee Midwinter Meeting" in the subject line. The materials will be posted on the meeting website and made available for downloading prior to and during the meeting.

In addition to your written materials, please forward a completed Speaker Release Form (attached) by February 19, 2021 to laborlawpapers@americanbar.org.

Please feel free to contact me should you have any questions regarding the Midwinter Meeting.

Sincerely,

Brad Hoffman
Director
ABA Section of Labor and Employment Law
Brad.Hoffman@americanbar.org

**AMERICAN BAR ASSOCIATION
GOVERNMENT SPEAKER RELEASE**

ABA Entity: Section of Labor & Employment Law

Name of Presenter ("Presenter"):

Email:

Phone:

Government Department ("Department"):

ABA Program Title ("Program"): Committee on Practice & Procedure Under the NLRA Midw

Location of Program: Virtual

Date of Program: March 3-5, 20

Title of Presentation/Paper:

Please sign and return this form by: February 19, 20 to: laborlawpapers@americanbar.org

As part of its commitment to continuing legal education efforts, the American Bar Association (ABA) occasionally records its programs and makes those audio and video recordings, related Program materials, and/or edited transcripts thereof, available to its members and other professionals interested in the topics being covered. Presenter agrees to participate in the Program described above and grants the following rights:

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2. Presenter acknowledges that the ABA has the right to use Presenter's name, persona, photograph, biography, voice, likeness, speaker presentation and/or written materials in connection with the Program in perpetuity in any and all media or form of communication throughout the universe whether now existing or hereafter developed. The ABA, its successors, licensees or assigns may make modifications, such as to edit or duplicate the material, as they determine; however, the message conveyed in the remarks will not be altered. The ABA may not give special emphasis to the Presenter or the Presenter's name, title, position, likeness, voice, remarks or biographical information in connection with advertising, publicity, endorsement, fundraising and/or promotional purposes; except the ABA may list Presenter's name and United States government affiliation among a complete list of participants in the Program, giving Presenter no greater prominence than the names and affiliations of the other participants.

In its print materials and on its webpage, the ABA may utilize Presenter's appearance, as well as any accompanying written or visual information, to inform about the Program.

3. Presenter represents that the presentation and/or written materials are original to Presenter and Presenter's staff and to the best of the Presenter's knowledge do not infringe upon any copyright, proprietary right, or any other right whatsoever of any party and that Presenter has made no agreements inconsistent with this Government Speaker Release ("Release"). Presenter further represents that to the best of the Presenter's knowledge the presentation and/or written materials contains no matter that is scandalous, obscene, or defamatory or otherwise contrary to law.

4. Presenter hereby acknowledges and agrees that the ABA has the right to use, transcribe, publish, reproduce, distribute, display and sell any audio, written or visual materials submitted in connection with the oral presentation, and to make the presentation, and/or written materials available in physical and electronic form, including mounting a copy of the presentation and/or written materials on media servers where the presentation and/or written materials may be copied, downloaded and/or printed by persons accessing the servers, and acknowledges the presentation and/or written materials may be used and distributed without seeking further Presenter approval.

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"Media" may include print, radio, television, internet or other journalists as credentialed by the Division for Media Relations and Communication Services, including ABA journalists. In addition, Presenter acknowledges that media may record, photograph, or make fair use of portions of the presentation.

6. In agreement for use of the Presentation, the ABA agrees to make a good faith effort to use the Presentation in a way that does not cause damage, harm or embarrassment to the Presenter or the Department.

7. The terms and conditions of this Release constitute the full and complete understanding between the parties. No other verbal or written agreement shall vary or alter any provision of this Release unless both parties consent to modify this Release in a signed writing. This Release is not transferable or assignable.

Signature: _____

Printed Name: _____

Title: _____

Government Department: _____

Date: _____

AMERICAN BAR ASSOCIATION
SPEAKER RELEASE

ABA Entity: Section of Labor & Employment Law

Name of Presenter ("Presenter"):

Email:

Phone:

Address:

ABA Program Title ("Program"): Committee on Practice & Procedure Under the NLRA Midwinter

Location of Program: Virtual

Date of Program: March 3-5, 2020

Title of Presentation/Paper ("Presentation"):

Please sign and return this form by: February 19, 2020 to: laborlawpapers@americanbar.org

As part of its offering of on-demand continuing legal education (CLE) efforts and other programmatic offerings, the American Bar Association (ABA) occasionally records its programs and makes those audio and video recordings, related Program materials, and/or edited transcriptions thereof, available on an on-demand basis to its members and other professionals interested in the topics being covered. Presenter agrees to participate in the Presentation described above and grant the following rights

Presenter hereby grants to the ABA the following rights to the Presentation and to any written or visual material submitted in connection with the Presentation(s) at the Program in any and all media or form of communication whether now existing or hereafter developed: (1) the non-exclusive perpetual worldwide right to use, transcribe, publish, reproduce, distribute, sell, display, or license the Presentation(s), for the purpose of continuing to make the Presentation available in an on-demand format, as presented in the Program, alone or in conjunction with other materials; (2) the non-exclusive perpetual worldwide right to use the Presentation(s) as part of a course book or in any other publication produced by the ABA; (3) the non-exclusive perpetual worldwide right to use the Presentation to promote and publicize the Program; and (4) the non-exclusive perpetual worldwide right to use Presenter's name, likeness and biography in connection with the advertising, publicity, and promotion of the Presentation(s) for on-demand CLE purposes. This license does not change the fact that Presenter retains sole copyright ownership of his/her Presentation and all associated rights to use, reproduce, license, distribute or display the Presentation.

Presenter represents that he/she has full power and authority to enter into this Speaker Release, and that the Presentation(s) and any material submitted: (1) are original with Presenter; (2) are not subject to any third-party copyright or that Presenter has obtained permission from the copyright proprietor consistent with this Speaker Release for use of any third-party copyrighted material; and (3) that the Presentation will not defame anyone or infringe on or invade the rights of others. Presenter agrees to provide any applicable permission agreements for the use of third-party copyrighted material upon request.

Presenter acknowledges and agrees to comply with ABA's "Open Meeting Policy," which states in part "all ABA programs are open to the media and on the record unless being held in executive session to conduct confidential business." "Media" may include print, radio, television, internet or other journalists credentialed by the Division for Media Relations and Communication Services, including ABA journalists. In addition, Presenter acknowledges that media may record, photograph, or make fair use of portions of the Presentation.

I hereby consent to the use of my presentation and other materials as described and agree with the provisions of this Speaker Release:

Signature:

Date:

VIRTUAL PRESENTER QUICK TIPS

Best practices to help you prepare for a professional virtual presentation.

1. Composing Your Screen

- Create a balanced composition of yourself in the frame by centering your head and shoulders on the screen.
- Make sure your head is at the same level as the camera.
- Avoid pointing the camera up or down at your face.

2. Eye Contact

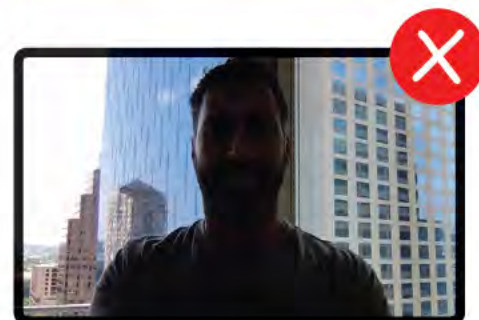
- Not sure where to look? Try to appear that you are looking at the viewer versus away from them.
- Try looking directly into the camera to better engage with your audience.

3. Lighting

- Use front lighting as much as possible.
- Do not have your back to the main light source, such as a window, as this will cause you to be in shadow.

4. Wardrobe

- Solid colors are best. Avoid busy patterns.
- Try to contrast your clothing with the background.
- Accessories such as a tie or scarf are a nice way to frame your face and bring added professionalism.



5. Noise & Distractions

- Make sure the room is quiet and you are close to your computer microphone.
- Turn off any applications that might have audio alerts, such as email or your phone.
- Keep pets and other visitors out of the meeting room.

6. 16:9 Versus 4:3?

- Slide presentations that are designed for wide screen —16x9 (HD) versus the older 4x3 (SD) format—will fill the screen better.

7. Intro & Closing

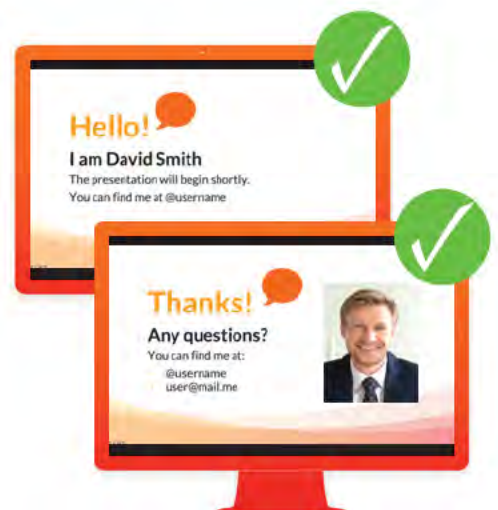
- If you have slides, consider recording an introduction before you share your screen to deliver the main presentation.
- Close your presentation with a head shot and a Thank You message so viewers will remember you.

8. Post-Event Cleanup

- There may be parts of your presentation at the beginning and end that should be cut—such as general housekeeping or waiting for attendees to join. Don't worry, we will edit those out for you.



16:9



Presenter Quick Start Guide



Technical Setup



Welcome to CONVENE™ Virtual Conferencing

This Quick Start Guide for presenters provides an overview of the CONVENE™ virtual conferencing platform. We recommend giving yourself enough time before the conference to review the contents of this guide, confirm you are using the recommended settings and test your computer. If you have any questions please contact your event manager.

Browser Requirements

As a presenter, you will most likely need to share your screen, in which case you **MUST** use the Google Chrome browser.



Screen sharing is required when:

- You want to display a slide deck
- You want to display any open application window on your computer

If you do NOT need to share your screen (meaning you will not be using visuals during your presentation), any web browser should be able to access all features of the CONVENE™ virtual conferencing platform.

Setting screen sharing preferences on your Mac or PC:

MAC

1. System Preferences > Security & Privacy
2. Select 'Screen Recording'
3. Select Google Chrome to allow screen recording
4. You will need to quit and restart Chrome for the changes to take effect

PC

1. Windows Settings > Privacy
2. App Permissions > Camera
 - 'Allow access to the camera on this device'
 - 'Allow apps to access your camera'
 - 'Allow desktop apps to access your camera'
4. App Permissions > Microphone
 - 'Allow access to the microphone on this device'
 - 'Allow apps to access your microphone'
 - 'Allow desktop apps to access your microphone'

Slideshows

Important Settings for PowerPoint and Keynote

As a presenter you will likely want to share slides that were created using PowerPoint or Keynote. Follow these recommendations to ensure that your presentation is displayed optimally on the CONVENE™ virtual conferencing platform.

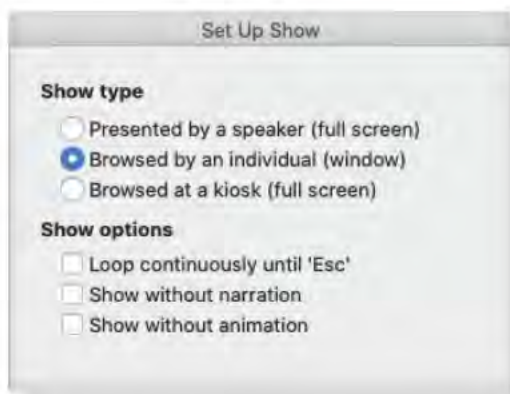
Slideshow 'Windowed' Mode

Your slide show **MUST** be set up to play in a window, NOT full screen. This will allow you continued access to the meeting room features while you are advancing your slides.

PowerPoint Setup

Slide Show > Set Up Slide Show >
Show Type > Browsed by an individual
(window)

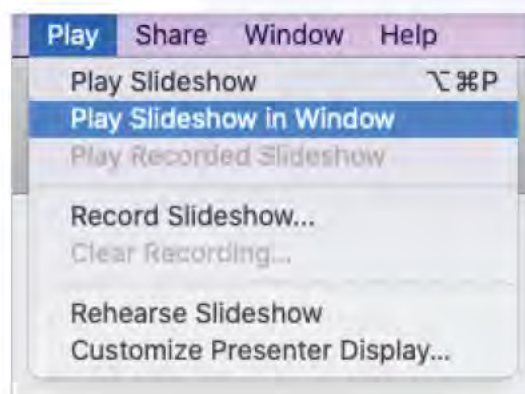
Your slideshow will not automatically begin playing after you change these settings. You may wish to save your changes.



Keynote Setup (Version 10.1 or Later Required)

Play > Play Slideshow in Window

The slideshow will automatically begin playing in a window.



Play Your Slideshow BEFORE The Presentation Starts!

Your slideshow **MUST** be playing before the presentation begins so that you can seamlessly change from your video camera's view to the slideshow content.

You can move your slideshow's window off to the side of your desktop until you are ready to present it. When you share your screen, the slideshow will appear in the list of open application windows.

Getting Ready

The Green Room

The meeting room serves as a virtual green room that opens 30 minutes before your session starts. Use this time to get comfortable, familiarize yourself with the meeting controls, test screen sharing and talk to other presenters.

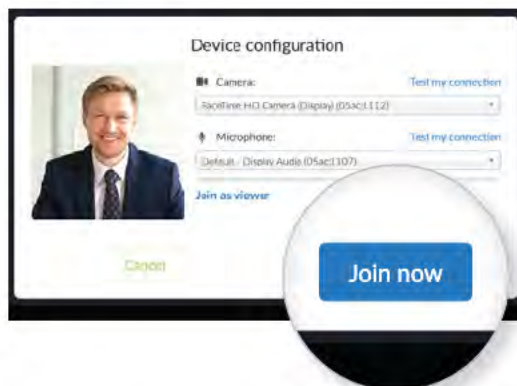
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Visit the 'Virtual Lobby' or 'My Agenda' to find your session's tile. Click to enter the meeting room.

You will be prompted to configure your camera and microphone.

Click 'Join Now'



Setting Up & Going Live

Meeting Kick-off Features



Before going live presenters can preview the room to see who is in attendance. Host presenters can customize the layout of the windows their audience will see. When everything is ready it's time to start the live stream.

Live Preview

Presenters can click 'Live preview' to see how many attendees have entered the meeting room prior to beginning the session.

Control Room

The host presenter can customize the layout of the windows that the audience will see by clicking 'Control room'.

Starting The Live Stream

When you are ready to start the session, click 'Start stream'

Important Note: Only the event host can see the 'Start stream' button. If there is more than one presenter in your session, and you are the host, you **MUST** click the 'Start stream' button to begin the live meeting.



Engaging The Audience

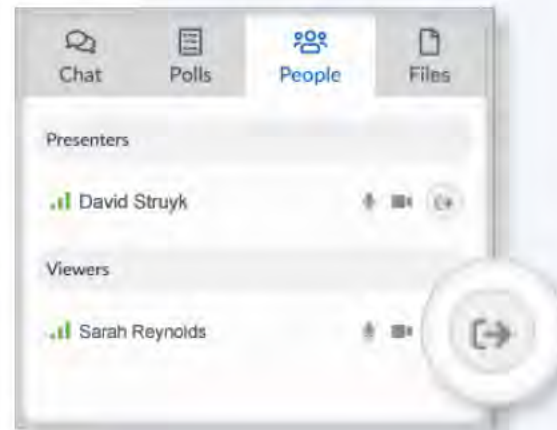
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Bring Attendees Into The Live Stream

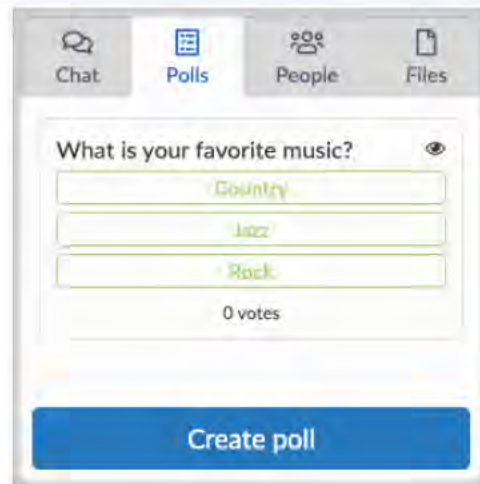
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- Click on the 'People' tab
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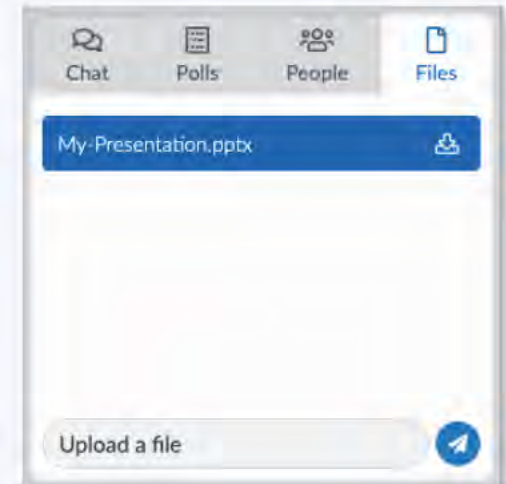
Create Polls on The Fly

- Click on the 'Polls' tab
- Click 'Create poll' to add your questions (You can do this in advance to save time)
- Make a poll visible to by clicking the '👁' icon
- Tell the attendees that the poll is now live and ask them to contribute their response



Share Files

Presenters can upload their slides or other relevant downloadable content for attendees to grab.



Testing & Troubleshooting

Important tips for fielding technical issues before the conference.

CONVENE™ Virtual Conferencing relies upon multiple technologies to offer a highly interactive experience for all attendees. These testing and troubleshooting tips can help you get the most out of your next virtual conference experience.

Test before the conference.

It is important to test your computer before the conference begins to make sure that you can access all features of the CONVENE™ Virtual Conferencing platform. The conference site is accessible prior to the conference start, providing time to troubleshoot technical issues.

Test the device you intend to use during the conference.

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We recommend using the Google Chrome browser if you are having issues with other browsers—especially if you need to share your screen as part of your presentation.

Test your device's connections with our Virtual Lobby Testing Tool.

Visit the link below and follow the steps to check if everything works. The test will check your browser compatibility, microphone, speaker, screen resolution, and connection:

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Companies and government agencies typically manage employee internet access with VPNs and Firewalls. Your company or agency may have security settings in place that could block the CONVENE™ Virtual Conferencing platform.

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- Disconnect from the VPN and try to access the conference site again. Or, try using a personal computer or device (aka non-company issued).
- Contact your IT administrator to ensure that the conference site is not being blocked.

Midwinter Meeting Speaker Tips and Guidance

1. You will be sent a unique link to access the Convene platform, which will be used for your attendance at the Midwinter Meeting and also to access the panel on which you are speaking. If you cannot locate the welcome email that will be sent from Brad.Hoffman@americanbar.org (which may get caught in your spam filter), please contact (b) (6) for assistance (b) (6) [@americanbar.org](mailto:(b)(6)@americanbar.org).
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10. If possible, please identify a backup moderator to be ready in case the moderator loses his/her connection to the Convene platform.
11. Please remember to look at the camera when speaking and be mindful you are on camera even if you are not speaking. You can tape a Post-It near your camera to guide your attention, which may be on a monitor that causes you to be looking away from the camera.
12. Have fun! Try to have the same banter/experience you would use if you were presenting in person.

From: [Brad Hoffman](#)
To: kabraham@barran.com; [Bryan T. Arnault](#); [Bass, Erin N.](#); abellotti@bredhoff.com; [Bock, Richard](#); jbucking@foleyhoag.com; jrbush@jonesday.com; crystal.carey@morganlewis.com; sdavis@cwsny.com; amy.gaylord@akerman.com; [Sara Geenen](#); neil.goldsmith@lathropgpm.com; hamada@ask-attorneys.com; ajaret@ufcw.org; [Jason, Meredith](#); smitchell@fisherphillips.com; MARK.PEARCE@georgetown.edu; (b) (6); [Schoone-Jongen, Terence G.](#); [Stover, Jazmyn](#); athompso@aft.org; Genaira.Tyce@arentfox.com; jwhite@latse.net; mwoods@cwsny.com; [Thompson, Tanja](#); [Gwynne Wilcox](#) (GWilcox@levyratner.com); [David Fortney](#); Emily.Perez@eperez@hammondshinners.com; ["Duffield, Todd C."](#); Johnnda.Bentley@beasley@jonesday.com; [Buckling, James](#); [Mark Pearce](#); [Ohr, Peter S.](#); [Anderson, Allison](#); Canale, Brenda N.; mbabson@seyfarth.com; stan@rosenblattgosch.com; lgeren@odonoghuelaw.com; [Brent Garren](#); peterfinch@dwt.com; jgutmandickinson@bushgottlieb.com; [Bob Giolito](#); rhooper@ebglaw.com; greenberg@workerlaw.com; Pamela.Jeffrey@yrozen@aflcio.org; JMasini@iuoe.org; sangyul.lee@klgates.com; [Kalls, Sara](#); mark.kisicki@ogletreedeakins.com; [Kohls, Timothy B.](#); jochs@seiu32bj.org; [Jessica Rutter, Legal](#); [Ring, John](#); [Emanuel, William](#); rsivitz@proskauer.com; [Siegel, Kathryn E.](#); [McFerran, Lauren](#); [Kaplan, Marvin E.](#); [Rothschild, Roxanne L.](#)
Cc: [Zick, Lara S.](#); (b) (6); [Miller, Denvy J.](#); Monica.Bowens@nlrb.go; (b) (6); (b) (6)
Subject: Speaker Training for DLL and P&P Midwinter Meetings
Date: Tuesday, February 23, 2021 4:41:20 PM
Attachments: [VisionCreative_VirtualPresenterBestPractices - Copy.pdf](#)
[CONVENE_PresenterQuickStartGuide_ControlRoom - Copy.pdf](#)
[CONVENE-Testing&Troubleshooting.pdf](#)
[Midwinter Meeting Speaker Tips and Guidance.pdf](#)

Dear Midwinter Meeting Speaker:

If you were unable to attend today's Convene speaker training - or if you'd like to review - you may access the Zoom recording at:

(b) (6)

Passcode: (b) (6)

You should have received a message from my email address that includes your unique link to enter the Convene virtual meeting platform. (The message was computer generated, so it may have been caught in your spam folder.) Let me know if you did not receive the message, and I will have it resent to you.

I am available this week to meet with you and your co-panelist(s) in the Convene platform for a practice session. Feel free to contact me to set up a time to meet.

Also, please find attached the following files for your reference:

1. Convene: Presenter Quick Start Guide
2. Convene: Testing & Troubleshooting
3. Virtual Presenter Quick Tips
4. Midwinter Meeting Speaker Tips and Guidance

Many thanks.

Brad

Brad Hoffman

Director

ABA Section of Labor and Employment Law

321 N. Clark Street

Chicago, IL 60654

312.988.5815

Brad.Hoffman@americanbar.org

VIRTUAL PRESENTER QUICK TIPS

Best practices to help you prepare for a professional virtual presentation.

1. Composing Your Screen

- Create a balanced composition of yourself in the frame by centering your head and shoulders on the screen.
- Make sure your head is at the same level as the camera.
- Avoid pointing the camera up or down at your face.

2. Eye Contact

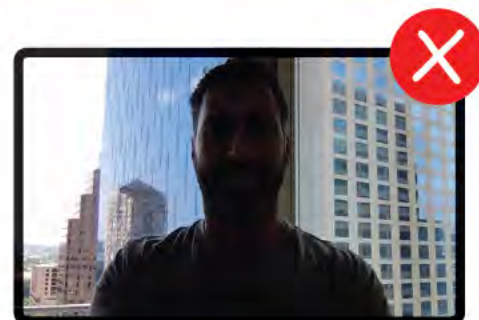
- Not sure where to look? Try to appear that you are looking at the viewer versus away from them.
- Try looking directly into the camera to better engage with your audience.

3. Lighting

- Use front lighting as much as possible.
- Do not have your back to the main light source, such as a window, as this will cause you to be in shadow.

4. Wardrobe

- Solid colors are best. Avoid busy patterns.
- Try to contrast your clothing with the background.
- Accessories such as a tie or scarf are a nice way to frame your face and bring added professionalism.



5. Noise & Distractions

- Make sure the room is quiet and you are close to your computer microphone.
- Turn off any applications that might have audio alerts, such as email or your phone.
- Keep pets and other visitors out of the meeting room.

6. 16:9 Versus 4:3?

- Slide presentations that are designed for wide screen —16x9 (HD) versus the older 4x3 (SD) format—will fill the screen better.

7. Intro & Closing

- If you have slides, consider recording an introduction before you share your screen to deliver the main presentation.
- Close your presentation with a head shot and a Thank You message so viewers will remember you.

8. Post-Event Cleanup

- There may be parts of your presentation at the beginning and end that should be cut—such as general housekeeping or waiting for attendees to join. Don't worry, we will edit those out for you.



16:9



Presenter Quick Start Guide



Technical Setup



Welcome to CONVENE™ Virtual Conferencing

This Quick Start Guide for presenters provides an overview of the CONVENE™ virtual conferencing platform. We recommend giving yourself enough time before the conference to review the contents of this guide, confirm you are using the recommended settings and test your computer. If you have any questions please contact your event manager.

Browser Requirements

As a presenter, you will most likely need to share your screen, in which case you **MUST** use the Google Chrome browser.



Screen sharing is required when:

- You want to display a slide deck
- You want to display any open application window on your computer

If you do NOT need to share your screen (meaning you will not be using visuals during your presentation), any web browser should be able to access all features of the CONVENE™ virtual conferencing platform.

Setting screen sharing preferences on your Mac or PC:

MAC

1. System Preferences > Security & Privacy
2. Select 'Screen Recording'
3. Select Google Chrome to allow screen recording
4. You will need to quit and restart Chrome for the changes to take effect

PC

1. Windows Settings > Privacy
2. App Permissions > Camera
 - 'Allow access to the camera on this device'
 - 'Allow apps to access your camera'
 - 'Allow desktop apps to access your camera'
4. App Permissions > Microphone
 - 'Allow access to the microphone on this device'
 - 'Allow apps to access your microphone'
 - 'Allow desktop apps to access your microphone'

Slideshows

Important Settings for PowerPoint and Keynote

As a presenter you will likely want to share slides that were created using PowerPoint or Keynote. Follow these recommendations to ensure that your presentation is displayed optimally on the CONVENE™ virtual conferencing platform.

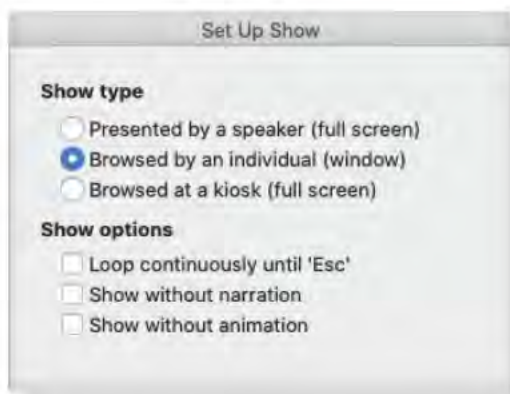
Slideshow 'Windowed' Mode

Your slide show **MUST** be set up to play in a window, NOT full screen. This will allow you continued access to the meeting room features while you are advancing your slides.

PowerPoint Setup

Slide Show > Set Up Slide Show >
Show Type > Browsed by an individual
(window)

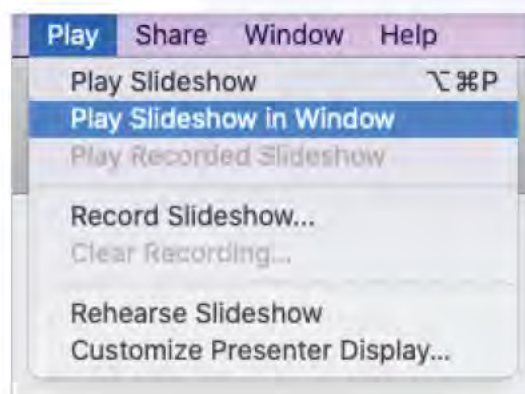
Your slideshow will not automatically begin playing after you change these settings. You may wish to save your changes.



Keynote Setup (Version 10.1 or Later Required)

Play > Play Slideshow in Window

The slideshow will automatically begin playing in a window.



Play Your Slideshow BEFORE The Presentation Starts!

Your slideshow **MUST** be playing before the presentation begins so that you can seamlessly change from your video camera's view to the slideshow content.

You can move your slideshow's window off to the side of your desktop until you are ready to present it. When you share your screen, the slideshow will appear in the list of open application windows.

Getting Ready

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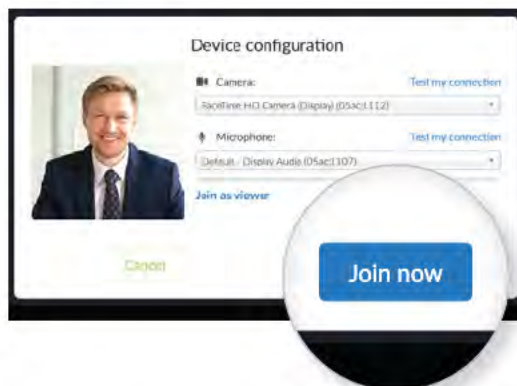
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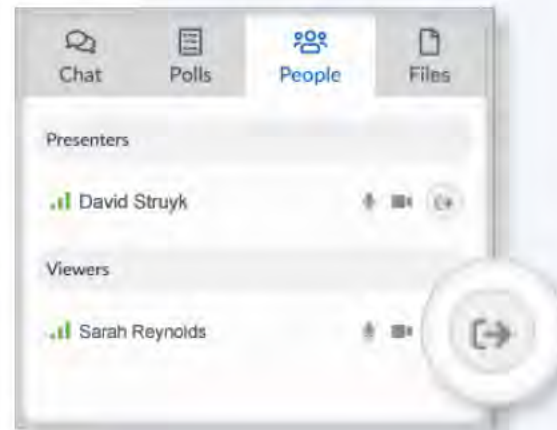
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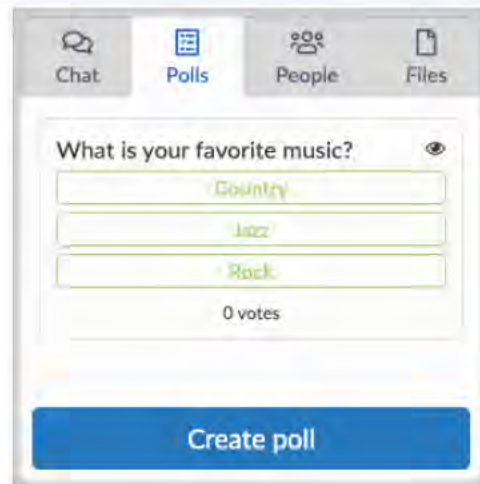
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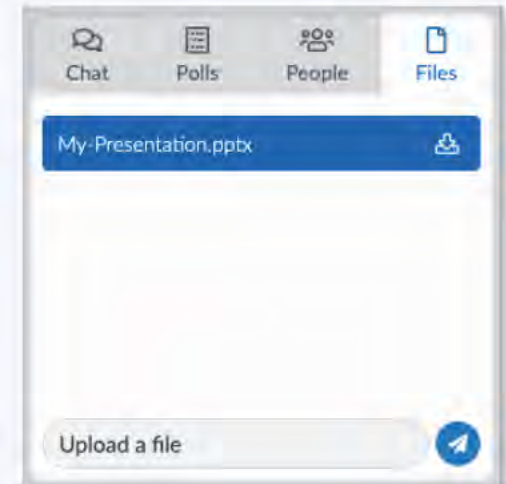
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From: [Johnda Bentley](#)
To: alanderson@foleyhoag.com; [Bryan T. Arnault](#); mbabson@seyfarth.com; [Bock, Richard](#); [Bush, Joanne R.](#); bcanale@littler.com; [Susan Davis](#); [Julie Gutman Dickinson](#); [Emanuel, William](#); peterfinch@dwf.com; [Brent Garren](#); [Amy Gaylord](#); [Lance Geren](#); [Bob Giolito](#); [Stan Gosch](#); [Melissa Greenberg](#); rhooper@ebglaw.com; [Pamela Jeffrey](#); sarakalis@paulhastings.com; [Kaplan, Marvin E.](#); mark.kisicki@ogletreedeakins.com; timothy.kohls@allina.com; [Lee, Sang-yul](#); [Masini, Jose](#); [McFerran, Lauren](#); jochs@seiu32bj.org; [Ohr, Peter S.](#); [David Prouty](#); [Ring, John](#); [Yona Rozen](#); [Jessica Rutter, Legal](#); [Schoone-Jongen, Terence G.](#); kslegel@littler.com; [Sivitz, Rebecca J.](#); [Thompson, Tanja L.](#)
Cc: [Easley, Brian West](#); [Emily Perez](#); [Duffield, Todd C.](#)
Subject: Press Attending DLL/P&P Midwinter Meeting
Date: Wednesday, March 3, 2021 1:22:21 PM

Dear P&P Midwinter Speakers:

Please be aware that there are four media reporters attending the DLL/P&P Midwinter Meeting this year, so do not say anything you would not want quoted.

Thank you,

Jonnee Bentley, Union Program Co-Chair
Brian Easley, Employer Program Co-Chair

From: [Kwon, Christy](#)
To: [Monica Guizar](#)
Cc: [McFerran, Lauren](#); [Anastas, Maria](#); [Meyers, Mary](#); [Krafts, Andrew J.](#); [Thomas A. Lenz \(TLenz@aalrr.com\)](#); (b) (6)
Subject: RE: Conf Call, NLRB Panel – Update Under New Administration, July 15, 2021, 10:30am-11:45am
Date: Thursday, March 25, 2021 1:14:27 PM

Thank you all for participating in the Doodle. I will send you a calendar invite for a conference call on **Monday, April 12, noon (PST) / 3pm (EST)**.

Thank you!
Christy

From: Monica Guizar <monica.guizar@seiu.org>
Sent: Saturday, March 20, 2021 6:43 AM
To: Kwon, Christy <Christy.Kwon@nrlb.gov>
Cc: McFerran, Lauren <Lauren.McFerran@nrlb.gov>; Anastas, Maria <Maria.Anastas@ogletree.com>; Meyers, Mary <Mary.Meyers@nrlb.gov>; Krafts, Andrew J. <Andrew.Krafts@nrlb.gov>; Thomas A. Lenz (TLenz@aalrr.com) <TLenz@aalrr.com>; (b) (6) <(b) (6)@calawyers.org>
Subject: Re: Conf Call, NLRB Panel – Update Under New Administration, July 15, 2021, 10:30am-11:45am

Thank you and I look forward to working with you!
Have a great weekend!
Monica

Monica Guizar
Associate General Counsel
Service Employees International Union (SEIU)
3055 Wilshire Blvd., Suite 1050
Los Angeles, CA 90010
Cell Phone: (213) 393-4303
Fax: (213) 381-7348

On Fri, Mar 19, 2021 at 5:30 PM Kwon, Christy <Christy.Kwon@nrlb.gov> wrote:

Dear Lauren, Monica and Maria: On behalf of CLA, Tom and I thank you for agreeing to speak at the upcoming Labor and Employment Section's Annual Meeting. We believe a lively and informative panel discussion about new developments at the Board under the Biden Administration will be of interest to the bar. I've also copied (b) (6) of CLA who will help us shepherd this panel.

Please let us know when you are available for a conference call to develop the scope and format of the panel. It'll either be at 9am or 12 PST to accommodate Lauren who is on eastern time.

Please respond with your availability here: [Doodle Poll](#) or by email if it's easier.

Mon, March 29, 9am or noon PST (noon or 3pm EST)

Tues, March 30, 9am or noon PST (noon or 3pm EST)

Wed, March 31, 9am or noon PST (noon or 3pm EST)

Mon, April 12, 9am or noon PST (noon or 3pm EST)

Tues, April 13, 9am or noon PST (noon or 3pm EST)

Fri, April 16, 9 am (noon EST)

Mon, April 19, 9am or noon PST (noon or 3pm EST)

Tue, April 20, 9am or noon PST (noon or 3pm EST)

Below is the tentative name of the panel, and the date and time it is scheduled for.

NLRB Panel – Update Under New Administration

July 15, 2021 (Thursday), 10:30am-11:45am (PST)

Virtual Labor and Employment Annual Meeting

Sincerely,

Christy

Christy J. Kwon

Regional Attorney

[National Labor Relations Board](#), [Region 32](#)

[Like us on Facebook](#)

1301 Clay Street, Suite 300N

Oakland, CA 94612

Direct Line: 510-671-3020

Click [here](#) to E-FILE documents, charges, and petitions.

Labor and Employment Section, Executive Committee Advisor
Past-Chair of L&E Annual Meeting
California Lawyers Association (formerly, State Bar of California)
<https://calawyers.org/section/labor-and-employment-law/>

From: [Judy Conti](#)
To: [Cruz, Jeffrey N.](#); [McFerran, Lauren](#)
Subject: FW: La NLRB crea un sitio nuevo de internet y cuentas de Twitter en español, reafirmando su compromiso de difusión
Date: Wednesday, March 31, 2021 9:30:38 AM

I LOVE LOVE LOVE seeing this!

From: National Labor Relations Board <e-Service@service.nlr.gov>
Sent: Wednesday, March 31, 2021 9:13 AM
To: Judy Conti <jconti@nelp.org>
Subject: La NLRB crea un sitio nuevo de internet y cuentas de Twitter en español, reafirmando su compromiso de difusión

You are subscribed to Press Releases for National Labor Relations Board. This information has recently been updated, and is now available.

[La NLRB crea un sitio nuevo de internet y cuentas de Twitter en español, reafirmando su compromiso de difusión](#)

03/31/2021 09:00 AM EDT

March 31, 2021

Washington, DC – La Junta Nacional de Relaciones del Trabajo ha creado una nueva versión en español de su página de internet, [NLRB.gov/es](#). Ahí, miembros del público pueden acceder a recursos en cuanto a sus derechos en el trabajo y cómo presentar una queja, conocer la historia de la agencia y sus funciones actuales, y solicitar un orador de la NLRB.

Además, la agencia creó dos cuentas de Twitter en español - [@NLRBes](#) para noticias de la Junta y decisiones, y [@NLRBGce](#) para noticias e información por parte de la oficina del asesor jurídico general.

Esto es parte del compromiso por parte de la presidenta Lauren McFerran y del asesor jurídico general interino Peter Sung Ohr para incrementar la difusión y accesibilidad en la NLRB, y educar a los trabajadores sobre sus derechos y protecciones laborales.

“Una de mis prioridades como presidenta es incrementar la participación del público y la accesibilidad de la agencia,” explicó la presidenta McFerran. “Para cumplir con nuestra misión, los trabajadores necesitan saber que existimos, conocer cuáles son sus derechos, recibir la orientación que necesitan por parte de la agencia y aprender fácilmente cómo emplear los recursos de la agencia.”

La semana pasada, la oficina del asesor jurídico general [publicó un memorándum](#) reafirmando su obligación de acercarse e involucrar al público de manera proactiva. Las recomendaciones incluyen llegar a la población que desconoce la Ley Nacional de Relaciones del Trabajo, incrementar la presencia en los medios de comunicación y apariciones públicas, ofrecer más información a organizaciones comunitarias y participar en clínicas legales gratuitas.

“Educar a los trabajadores, incluyendo aquellos que apenas están entrando a la fuerza laboral y otras poblaciones desatendidas, y a las empresas es esencial para la misión de la agencia,” dijo el asesor jurídico general interino Ohr. “Sigue siendo esencial para nuestra misión que continuemos nuestra extensa y fuerte cultura de participación con el público para promover una concienciación y entendimiento más grande de la Ley.”



Questions? [Contact Us](#)



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This email was sent to jconti@nelp.org using GovDelivery Communications Cloud on behalf of: National Labor Relations Board
- 1015 Half Street SE - Washington, DC 20570 - 866-667-6572



Judy Conti

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From: [Monica Guizar](#)
To: [Kwon, Christy](#)
Cc: [McFerran, Lauren](#); [Anastas, Maria](#); [Thomas A. Lenz \(TLenz@aalrr.com\)](#); [Meyers, Mary](#); [Krafts, Andrew J.](#); [\(b\) \(6\)](#); [Anastas, Maria](#)
Subject: Re: [Reminder] RE: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am
Date: Monday, April 12, 2021 2:33:44 PM

Thank you, Christy! I'm happy to cover the PRO Act. Can you share the materials from the last round up?
Looking forward to talking to you all soon,
Monica

Monica Guizar
Associate General Counsel
Service Employees International Union (SEIU)
3055 Wilshire Blvd, Suite 1050
Los Angeles, CA 90010
Cell Phone: (213) 393-4303
Fax: (213) 381-7348

On Mon, Apr 12, 2021 at 2:12 PM Kwon, Christy <Christy.Kwon@nlrb.gov> wrote:

Dear Panelists: this is a friendly reminder of our conference call today (please join by audio below if you don't have Teams) at noon PST (3 pm EST). We will go over which subject areas each of you would like to cover (generally 3 topics each) and the format.

Below is a outline of the last NLRB round up so that you can see what topics we had covered. We can follow the same outline but I suggest that someone cover the PRO Act for a few minutes since we'll have an extra 15 minutes, or, at least to acknowledge it.

More in-depth updates: (60 minutes total)

- I. Union and PCA Discrimination/Termination Cases (15 min total)
- II. Work Rules (15 min total)
- III. Duty to Bargain (30 min)

Lightning Round Updates (10 minutes total)

- IV. Case Rulemaking
 - a. R-Cases (2min)
 - b. C-cases (2 min)
- V. Zoom hearings – r and c cases (4 min)
- VI. Mail v. manual elections (2min)

Q&A & Misc (5 minutes)

-----Original Appointment-----

From: Kwon, Christy
Sent: Thursday, March 25, 2021 10:18 AM
To: McFerran, Lauren; Anastas, Maria; Thomas A. Lenz (TLenz@aalrr.com); Monica Guizar
Cc: Meyers, Mary; Krafts, Andrew J.; [\(b\) \(6\)](#); Anastas, Maria
Subject: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am
When: Monday, April 12, 2021 12:00 PM-12:30 PM (UTC-08:00) Pacific Time (US & Canada).
Where: Microsoft Teams Meeting

Hi All, you may dial in with the number below or click the link below. Thank you!

Microsoft Teams meeting

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[Click here to join the meeting](#)

Or call in (audio only)

[\(b\) \(6\)](#) United States, Los Angeles

Phone Conference ID [\(b\) \(6\)](#)

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From: [Monica Guizar](#)
To: [Kwon, Christy](#)
Cc: [McFerran, Lauren](#); [Anastas, Maria](#); [Krafts, Andrew J.](#); [Anastas, Maria](#); [Thomas A. Lenz \(TLenz@aalrr.com\)](#); [Meyers, Mary](#); (b) (6)
Subject: Re: [Reminder] RE: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am
Date: Monday, April 12, 2021 4:05:34 PM

Thank you!

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On Mon, Apr 12, 2021 at 3:58 PM Kwon, Christy <Christy.Kwon@nlrb.gov> wrote:

Hello All -- Attached and below is the outline of responsibilities as we discussed. I've also attached two prior powerpoints so that you can see what we've done in the past. The deadline to get materials to me is **June 15, 2021**. I'd like to schedule a call right before the panel so that we can confirm the final format. Please let me know if **Monday, July 12, noon (PST)** does not work for you. If you have any questions, please contact me and Tom. Thank you! Christy and Tom

- I. State of the Board – **McFerran** (10 min overview)
 - a. R-Case & C-Case Rulemaking (McFerran intro)
 - b. Zoom hearings – r and c cases (min) (McFerran)
 - c. Mail v. manual elections, Aspirus Keweenaw (McFerran)
 - d. Outreach (McFerran) (part of intro)
 - e. Spanish language website
 - f.
- II. Union and PCA Discrimination/Termination Cases (20 min total)(**Monica**)
 - a. Reemphasis on PCA by GC, especially regarding health and safety and COVID-19
 - b. Discussion of some recent cases
 - c.

!

- III. Work Rules (30 min total) – (**Maria**)
 - a. Caesar's – email
 - b. Union Insignia – Walmart
 - c. Access?
 - d. Tweets can violate 8a1
 - e. Johnnie's Poultry – changes to standard? (comments solicited)
 - f. Investigations – confidentiality issues
 - g. Arbitration Agreements – confidentiality provisions
 - h.

- IV. Pro Act (**Monica**)(10 minutes)

- V. Q&A & Misc (5 minutes)

**NLRB Panel for CLA – Update Under New Administration, July 15, 2021,
10:30am-11:45am (1.25 hours)(PST)**

Panelists: Chairman Lauren McFerran (neutral), Maria Anastas (employer), Monica Guizar (union)

CLA L&E Exec Committee Advisors: Christy Kwon and Thomas Lenz

Deadline: Submit Powerpoint Sides by **June 15, 2021** to christy.kwon@nrlb.gov

OUTLINE

- I. State of the Board – **McFerran** (10 min overview)
 - a. R-Case & C-Case Rulemaking (McFerran intro)
 - b. Zoom hearings – r and c cases (min) (McFerran)
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 - g. Arbitration Agreements – confidentiality provisions
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- V. Q&A & Misc (5 minutes)



January 12, 2021
Webinar
12 – 1:15pm

Annual Round-Up on NLRB Cases, Guidance and Rulemaking

Presented by:

Susan Garea – Partner, Beeson, Tayer, & Bodine

Catherine Ventola – Supervisory Attorney,
NLRB Region 32, Oakland

Thomas A. Lenz – Partner, Atkinson, Andelson,
Loya, Ruud & Romo

UPDATES AND PERSPECTIVES ON:

- TERMINATIONS FOR PROTECTED CONCERTED ACTIVITIES AND UNION ACTIVITIES
- WORKPLACE RULES AND POLICIES
- DUTY TO BARGAIN WITH THE UNION DURING THE COVID-19 PANDEMIC
- UPDATE ON RULEMAKING, ZOOM HEARINGS, MAIL V. MANUAL ELECTIONS



PROTECTED CONCERTED ACTIVITIES ("PCA")

- SUMMARY OF STATUTORY BASIS FOR THIS RIGHTS
- NEW STANDARDS FOR WHEN "OUTBURSTS" LOSE THE PROTECTIONS OF THE ACT
- REIVEW OF PCA TERMINATION CASES

Where
does the
right to
engage in
protected
concerted
activities
comes
from?

Section 7 of the National Labor Relations Acts provides:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3). (emphasis added)

**So, even
in a non-
Union
setting:**

Section 7 grants employees the right to:

1. Organize on behalf of a union;
2. Engage in concerted activities for the purpose of mutual aid or protection;
3. To refrain from such activities.

PROTECTED CONCERTED ACTIVITY


Section 7 - Employees shall have the right to self-organization, to form, join, or assist **labor organizations...**and to engage in other **concerted activities for the purpose of...mutual aid or protection...**

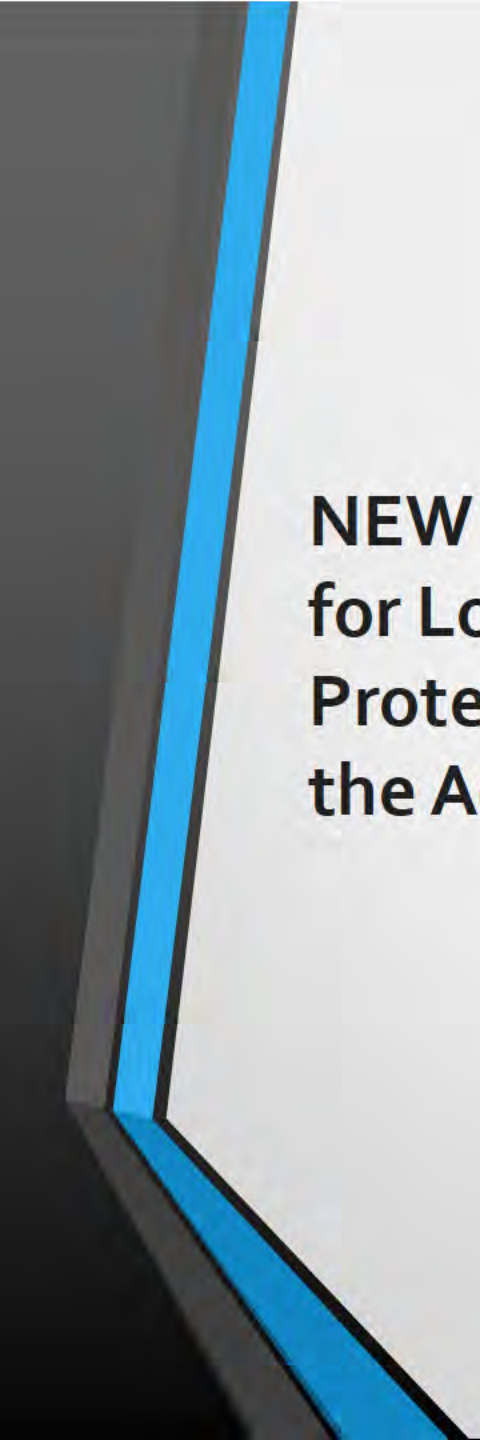
Concerted – “engaged in with or on the authority of other employees, and not solely on behalf of the employee himself.” *Meyers I*, 268 NLRB 493, 497 (1984).

Protected – “for mutual aid or protection.”

Unlawful discrimination - an employer violates Section 8(a)(1) of the Act if it discriminates against an employee in retaliation for their protected concerted activity.

***But not all
concerted
conduct is
protected***





NEW TEST for Losing Protection of the Act

General Motors, 369 NLRB No. 127 (7/21/20)

Burden-shifting *Wright-Line** analysis now applied in cases of alleged retaliation/discrimination where employees disciplined for misconduct in the course of Section 7 protected activity

*at the same time NLRB applying stricter version of this test (see *Tschiggfrie* and progeny)

The *Wright* *Line* Standard

applicable to claims of retaliation/discrimination

The General Counsel must show that:

- (1) the employee engaged in Section 7 activity
- (2) the employer knew of that activity, and
- (3) the employer had animus against the Section 7 activity

Then burden shifts to Employer to show that it would have taken the same action even in the absence of the Section 7 activity

*previously had not applied when employee disciplined/discharged for conduct that is part of the *res gestae* of protected concerted activities*

When Do Employees Lose Protection of the Act?

Overruling Atlantic Steel Co., 245 NLRB 814 (1979)
applying 4-factor test to determine if conduct so
opprobrious as to lost the protection of the Act in
cases of workplace outbursts

(1) the place of the discussion; (2) the subject
matter of the discussion; (3) the nature of the
employee's outburst; and (4) whether the
outburst was, in any way, provoked by an
employer's unfair labor practice

When Do Employees Lose Protection of the Act?

Overruling Clear Pine Mouldings, Inc., 268 NLRB 1044, 1046 (1984) test that applied to when picket-line misconduct lost the protection of the Act

under the circumstances, it may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act (i.e. threats)



General Motors Take-Away

Unions should give their stewards etiquette training. Apparently, Victorian-era manners are expected of workers in heated labor-management disputes to retain protections under the Act.

The *New Wright-Line*

Tschiggfrie Properties, Ltd., 368 NLRB No. 120 (11/22/19) – NLRB “clarified” that the General Counsel’s initial burden under *Wright Line* requires evidence of a causal relationship between the employee’s protected activity and employer’s adverse action

NLRB is requiring more direct evidence of nexus (general union animus insufficient)

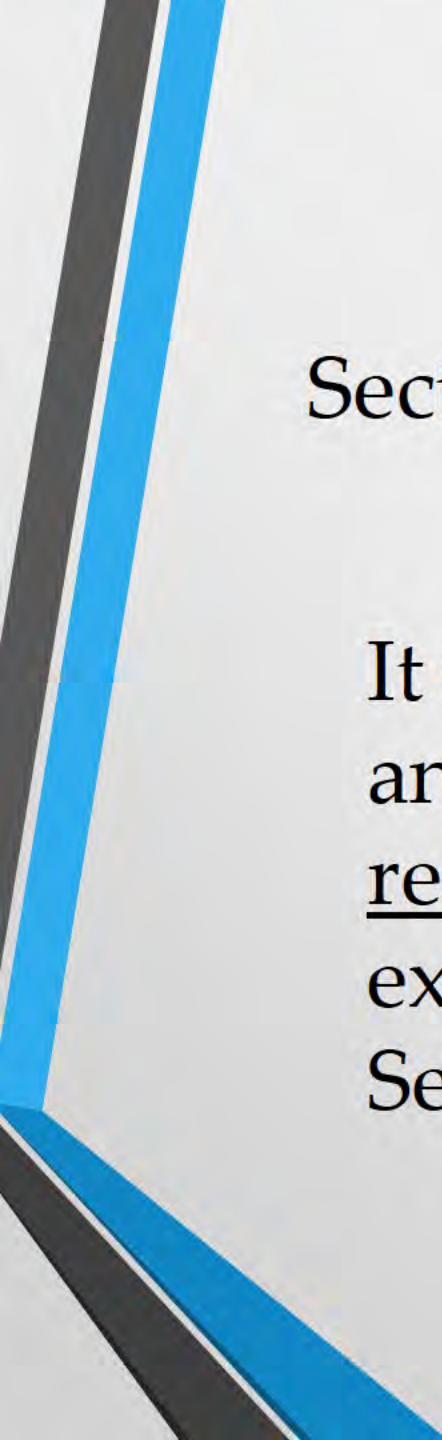
The *New* *Wright-Line*

Prior to *Tschiggfrie*, in *Electrolux Home Products, Inc.*, 368 NLRB No. 34 (8/2/19), the Board overturned ALJ's finding of discrimination and held that pretextual reason for termination insufficient to establish unlawful motive under *Wright Line*

Take away: the already-difficult-to-meet retaliation/discrimination standard is more difficult for employees.



Employer Rules and Handbooks



Section 8(a)(1) of the Act provides:

It shall be an unfair labor practice for an employer – (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

**In 2020,
more work
rules fall
under *The
Boeing Co.*
test**

In *The Boeing Company*, 365 NLRB No. 154 (Dec. 14, 2017), the Board reassessed its standard for when the mere maintenance of a work rule violates Section 8(a)(1) of the Act. Overturning the first prong of *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), the Board established a new standard that focused on the balance between the rule's negative impact on employees' ability to exercise their Section 7 rights and the rule's connection to employers' right to maintain discipline and productivity in their workplace

Restrictions on Union Insignia

- **Wal-Mart Stores, Inc.**, 368 NLRB No. 146 (Dec. 16, 2019)

NLRB applied the ***Boeing*** test for workplace policies to a Wal-Mart policy stating that employees may only wear 'small, non-distracting' union insignia in the workplace. Against arguments that Wal-Mart's policy unlawfully infringed upon employee rights, Wal-Mart asserted its policy was lawful in customer-facing areas of the store. However, the policy was unclear as to "employee-only" zones.

The Board distinguished two types of employer policies on union buttons and insignia:

Where an employer bans the wearing of all union buttons and insignia, the Board and Supreme Court has found that such rules are presumptively unlawful. The burden is then placed on the employer to justify the rule on account of 'special circumstances'—a very narrow exception.

Where an employer—as in Wal-Mart Stores, Inc.—instead allows certain buttons, but limits the size and/or appearance of union buttons and insignia that employees can wear, the Board has now held that the Boeing test for facially-neutral rules applies instead.

The Board did not overturn the “special circumstances” exception to all prohibitions on union buttons and insignia. However, this decision suggests the Boeing test might be applied to issues where the Board had previously set higher standards to justify workplace restrictions. If so, employers will more likely be successful in defending other rules as well to restrict employees' workplace activities and expression.

Confidentiality of Workplace Investigations

- **Apogee Retail LLC**, 368 NLRB No. 144 (December 16, 2019)
- The Board found that a company rule that required employees to maintain confidentiality and prohibited unauthorized discussion regarding workplace investigations into illegal or unethical conduct was not unlawful.
- The Board applied the rule for facially neutral work rules established in **Boeing**, 365 NLRB No. 154 (2017).
- The Board overturned **Banner Estrella**, 362 NLRB 1108 (2015), which required an employer to make a case-by-case determination of whether confidentiality was required in a specific investigation.
- The Board noted that **Banner** had incorrectly placed the burden on the employer to demonstrate whether confidentiality concerns outweighed the employee's Section 7 rights.
- The Board further noted that the **Banner** test often conflicted with other federal regulation, for example, the EEOC. (Note: The conflict between NLRB and EEOC rules was previously litigated and ruled on, against the Employer in **Hyundai American Shipping**, 357 NLRB No. 80 (2011), enforcement granted in part and denied in part at 805 F.3d 309 (D.C. Cir. 2015)).

Employees' Use of Employer's Resources at Work

- **Caesars Ent. Corp.**, 368 NLRB No. 143 (December 16, 2019)
- The Board found that an employer may impose non-discriminatory restrictions — including outright bans — on the use of employer-owned IT systems (including the use of its email system) for non-work purposes.
- The Board overruled **Purple Communications**, 361 NLRB 1050 (2014), regarding employee's use of employer's IT resources to send "non-business" information.
- The Board reiterated that there is an exception in circumstances where there are no other reasonable means for employees to communicate with each other.

Rule Banning Employee Use of Personal Cell Phones at Work

- **Argos USA**, 369 NLRB No. 26 (February 5, 2020)
- The Employer suspended an employee for having a cell phone in his concrete truck in violation of the company's cell phone policy.
- The Board overturned the ALJ's conclusion that the policy was unlawful, citing **Boeing**, 365 NLRB No. 154 (2017) and applying its test for evaluating a facially neutral rule:
 - *The nature and extent of the potential impact on the exercise of Section 7 rights, and
 - *Legitimate justifications associated with the rule.
- The Board concluded that the employer's restriction of cell phones due to the "dangers of using cell phones while driving" and its emphases on road safety to be a legitimate justification for the rule, and that the rule did not restrict employees' right to communicate with each other during non-working time or otherwise restrict their Section 7 rights.
- * See also **Cott Beverages**, 369 NLRB No. 82 (May 20, 2020) – rule limiting use of cell phones on shop floor found lawful because based on the employer's "Good Manufacturing Practices" to ensure an uncontaminated product and the need to avoid distractions on the shop floor for safety purposes. These legitimate business interests outweighed the minimal impact on Section 7 rights.

Solicitation During Working Time

Wynn Las Vegas, LLC, 369 NLRB No. 91 (May 29, 2020)

- The Board found that although solicitation for a union usually involves asking another employee to sign a union authorization card, the definition also encompasses the act of encouraging employees to vote for or against a union.
- Therefore the Employer lawfully disciplined an employee for violating its no solicitation policy when she urged another employee to vote for a union.
- The Board overruled precedent that held solicitation required a contemporaneous tender of a union authorization card.
- Solicitation does not require a significant, or any, disruption of work to violate a lawful no solicitation rule.

THE DUTY TO BARGAIN DURING A PANDEMIC



What are “exigent circumstances?”



- Same rules apply but the Board clarified the narrow circumstances when “exigent circumstances” relieved an employer from its duty to bargain

Generally, an employer is permitted at least initially, to **act** unilaterally during emergencies such as COVID 19, so long as its action are reasonably related the emergency situation. But it must bargain over effects within reasonable time.

- No obligation to bargain over requiring employees to wear masks
- No obligation to bargain over decision mandated by state to transition to remote learning

Employer operating a children's museum in first contract bargaining bargained in bad faith by unilaterally eliminating furloughed employees' health insurance and vacation leave balances.

- In mid-March, by mayoral order, the museum was closed, and the Er placed ees on paid leave. After a stay-at-home order, the Er furloughed ees, and agreed to maintain health insurance through June at Union's request. Shortly after the state issued a roadmap for reopening, the Er advised the Union that the furlough was converted to layoff, retained a few ees, discontinued health care, payed out accrued leave, and discontinued leave accrual unless an ee was recalled.

- 8(a)(5) violation for unilateral elimination of health care and vacation accrual. Employer was not privileged by the pandemic to unilaterally cancel. These actions constitute material, significant, and substantial changes to ees' terms and conditions.
- Although the pandemic and related governmental orders created significant financial pressure on the Er, those did not preclude it from engaging in pre-implementation bargaining over the discrete changes at issues, including the selection of ees for layoff, as the Er knew it would need to layoff some ees in order to reduce expenses.

Charter school operator in first contract bargaining over administrative unit may have failed to promptly bargain over changes in terms and conditions to address COVID-19.

- The state ordered schools to close due to COVID-19 and implementation of remote learning. Days later, the Er unilaterally issued a document containing a myriad of changes for unit employees, including requiring a response to an email/call within an hour, communicating with families regarding remote learning and plans surrounding the closure, adding other new tasks to AP duties. The Union requested bargaining, and about two weeks later, the parties met. The Union asked for additional bargaining dates to discuss COVID-19 related changes. The Er offered to meet 3 weeks later after spring break, the Union objected to the delay.
- Employer is permitted to act initially in response to COVID-19 emergency, so long as action is reasonable related to the emergency situation but must bargain over the decision and its effects if decision bargaining is appropriate within a reasonable time thereafter. No violation for unilaterally implementing remote learning as it was mandated by the state. However, the Region was directed to further investigate (1) whether the changes were reasonably related to the COVID-19 emergency and (2) whether changes were material, substantial, and significant adjustments to employees' pre-existing terms.

Employer at nursing home refuses to bargain for extended period for a successor contract in order to focus entirely on resident care due to COVID-19 pandemic.

- From mid-March to Mid-May, Er refused to hold bargaining sessions, including by teleconference; refused to respond to Union's email proposals; and refused to consider a MOU on hazard pay. Er claimed it needed to focus on patient care but did not explain why its negotiators, who were not involved in administration or patient care, were not available to bargain during this period.
- 8(a)(5) complaint authorized. The pandemic did not privilege the ER to refuse to hold bargaining sessions, including by teleconference, from mid-March to mid-May, nor to fail to respond to Union proposals over email. Er also failed to bargain by failing to consider or discuss a proposal for a MOU over hazard pay for employees working during the pandemic, where, as here there was no contract in effect. Advice rejected Er argument that bargaining over MOU would be piecemeal bargaining.

The Duty to Bargain

“Contract Coverage Test”

In analyzing whether a collective bargaining agreement permits an employer’s unilateral action (i.e. the union has waived the right to bargain), the NLRB abandoned the “clear and unmistakable waiver” standard and is applying a “contract coverage” standard. *MV Transportation, Inc.*, 368 NLRB No. 66 (9/10/19).

If the action taken by the employer was within the scope of the contractual language, it may act without bargaining.

NLRB applied this new standard retroactively

NLRB does still recognize that waivers expire with CBA

Applying *MV* *Transportation* *in 2020*

ADT, 369 NLRB No. 31 (2/27/20) – ER permitted to implement 6-day workweek under *MV* where CBA stated that ER had right “to determine the reasonable amount . . . Or work needed”

Huber Specialty Hydrates, 369 NLRB No. 32 (2/25/20) – changes to attendance policy covered by management’s right clause that permitted adoption of reasonable rules and policies after “input” from Union

Applying *MV Transportation*

Smith's Frozen Foods, Inc., 19-CA-25281 – employer's unilateral change to its drug and alcohol policy expanding termination to off duty use ok under *MV Transportation*

Michigan Bell Telephone, 369 NLRB No. 124 (7/17/20), provision that covers employee compensation for union time, did not "cover" the question of an employee's status as an employee or full-time union official and, therefore, Employer had to bargain to change parties' past practice

Apex Linen Service, Inc., 28-CA-216351, dismissing unilateral change complaint based on *MV* where contract gave employer right to make and enforce work rules even though employer had never previously enforced safety or work performance rules previously

Deferral of MV Transportation Charges?

GC Memo, OM 20-03 (11/1/19) –

- if no arguable merit → dismiss (i.e. no material change to a mandatory subject of bargaining)
- If arguable violation and grievance filed → defer under *Dubo*
- If arguable violation and no grievance → defer under *Collyer*

Duty to Bargain over Employee Discipline

- **800 River Road dba CareOne**, 369 NLRB No. 109 (June 23, 2020)
- The Board held that the employer had no duty to bargain prior to disciplining bargaining unit employees during the commencement of a collective bargaining relationship where there was no collective bargaining agreement in effect.
- The Board overruled **Total Security**, 364 NLRB No. 106 (2016).
- The Board made this holding retroactive.

LIGHTNING ROUND

- **Rulemaking affecting Union Representation Matters**
- **Joint Employment Rule**
- **Remotes hearings due to Pandemic**
- **Mail vs. Manual Elections during the Pandemic**

Representation Case Rule Changes (NLRB Rules and Regulations, Section 103)

- **Blocking Charges (Section 103.20)** – The filing of a charge will not typically stop an election from taking place. Rather than stopping the election, ballots will be impounded until issues are resolved.
- **Voluntary Recognition Bar (Section 103.21(a))** — Employer and/or Union must provide notice of voluntary recognition creating a bargaining relationship to NLRB and affected employees. Posting/dissemination requirements for NLRB Notice, which may include electronic dissemination. Employees may petition for an election to challenge the recognition in an initial 45 day “open period.” (Note this regulation revives a process the Board once implemented via case decision in *Dana Corp.*, 351 NLRB 434 (2007), later overruled in *Lamons Gasket Company*, 357 NLRB No. 72 (2011)).
- **Construction Industry Recognition (Section 103.22(b))** — Construction industry bargaining relationships are presumed contract to contract rather than ongoing, consistent with NLRB Section 8(f) and *John Deklewa & Sons*, 282 NLRB 1375 (1987). A union cannot achieve a majority support-based ongoing Section 9(a) bargaining relationship without proof of uncoerced majority support by a majority of bargaining unit employees which is accepted by the employer. Mere contract language claiming the existence of majority support, without extrinsic evidence, is inadequate to establish a Section 9(a) relationship or to bar an election petition. (Note: The rule comes on the heels of a court ruling rejecting NLRB’s view of pure contract language based transformation of 8(f) to 9(a) in *Colorado Fire Sprinkler v. NLRB*, 891 F.3d 1031 (D.C. Cir. 2018)).

Joint- Employer Rule

NLRB issued final Joint-Employer Rule, 83 Fed. Reg. 46681 (2/26/20)

Overruled *Browning-Ferris* and imposed stricter standard than pre-*Browning Ferris*

Employer must possess and exercise substantial, direct and immediate control over at least one essential term and condition of employment (wages, benefits, hours, hiring, discharge, discipline, supervision, direction)

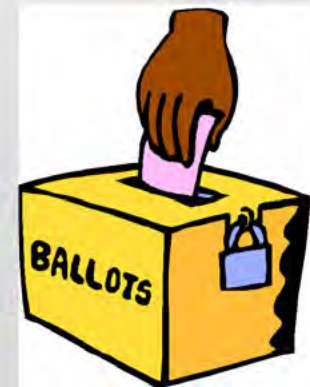
Remote Hearings

- NLRB regional offices have been ordering R-case hearings over zoom and other video-conference platforms
- NLRB Division of Judges have been ordering C-case hearings to be conducted over Zoom

GUIDELINES FOR CONDUCTING MAIL BALLOT ELECTIONS DURING PANDEMIC

Aspirus Keweenaw, 370 NLRB No. 20 (2020)

- (1) The Agency office tasked with conducting the election is under “mandatory telework” status;
- (2) The 14-day trend in the number of confirmed cases of Covid-19 in the county where the facility is located is increasing, or the 14-day positivity in the county is 5% ;
- (3) The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
- (4) The employer fails or refuses to commit to abide by the GC Memo 20-10 protocols;



(5) There is a current Covid-19 outbreak at the facility or the employer refuses to disclose and certify its current status;

GC Memo 20-10 requires employers to certify between 48 and 24 hours before a manual election, how many individuals present in the facility within the preceding 14 days have tested positive for Covid-19 (or are awaiting test results, are exhibiting characteristic symptoms, or have had contact with anyone who has tested positive in the previous 14 days). These certifications, however, take place after the direction of a manual election and only shortly before the election itself. The presence of Covid-19 at the employer's facility is also directly relevant to whether a manual election should be directed in the first place. Accordingly, for the duration of the pandemic, we require that in all cases where a party requests a manual election, the employer shall certify, by affidavit, as part of its submission regarding election arrangements, how many individuals present in the facility within the preceding 14 days have tested positive for Covid-19 (or are awaiting test results, are exhibiting characteristic symptoms, or have had contact with anyone who has tested positive in the previous 14 days). The determination that there is a Covid-19 outbreak at the employer's facility or the employer's failure or refusal to provide the required certifications will ordinarily indicate the propriety of a mail-ballot election

(6) Other similarly compelling considerations

If a Regional Director directs a mail-ballot election based on other circumstances related to the Covid-19 pandemic, the Board will consider at that time whether those circumstances warrant an exception to its preference for manual elections.

If any of the above factors are present, Regional Directors should consider directing a mail-ballot election, but these factors do not require a mail-ballot election. “Instead, we conclude only that a Regional Director who does direct a mail-ballot election under the foregoing circumstances will not have abused his or her discretion.” Slip op at 8.

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Q&A



**July 19, 2019
ANNUAL MEETING**

RECENT NLRB DECISIONS AND INITIATIVES

Panelists:

Harry I. Johnson, III – Partner, Morgan Lewis

Brian Gee – Regional Attorney, NLRB, Region
31, West Los Angeles

Julie Gutman-Dickinson – Partner, Bush
Gottlieb

Moderator:

Thomas A. Lenz – Partner, Atkinson,
Andelson, Loya, Ruud & Romo

WHAT'S THE LATEST AT THE BOARD?



Management and Union Perspectives

UPDATE AND PERSPECTIVES ON:

- PROTECTED CONCERTED ACTIVITIES
- EMPLOYEE VS. INDEPENDENT CONTRACTOR
- UNION'S DUTY OF FAIR REPRESENTATION TOWARD EMPLOYEES
- JOINT EMPLOYMENT
- ARBITRATION AGREEMENTS

Protected Concerted Activity

Section 7 - Employees shall have the right to self-organization, to form, join, or assist **labor organizations**...and to engage in other **concerted activities for the purpose of...mutual aid or protection...**

Concerted – “engaged in with or on the authority of other employees, and not solely on behalf of the employee himself.” *Meyers I*, 268 NLRB 493, 497 (1984).

Protected – “for mutual aid or protection.”

Unlawful discrimination - an employer violates Section 8(a)(1) of the Act if it discriminates against an employee in retaliation for their protected concerted activity.

Protected Concerted Activity

Alstate Maintenance, LLC, 367 NLRB No. 68 (January 11, 2019)

- Employer provides ground services at JFK Airport
- Charging Party Trevor Greenidge, a skycap whose compensation largely came from tips
- Luftansa asked for the skycaps' assistance handling a soccer team's equipment
- CP said, "We did a similar job a year prior and we didn't receive a tip for it." Then CP and three other skycaps refused to do the job
- Managers and other baggage handlers did most of the job before the four skycaps joined at the end
- Employer discharged CP and the three other skycaps

Protected Concerted Activity

Alstate Maintenance, LLC, 367 NLRB No. 68 (January 11, 2019)

- The complaint alleged that Respondent discharged CP in retaliation for his protected concerted statement: “We did a similar job a year prior and we didn’t receive a tip for it.”
- ***Not concerted***
 - In complaining about the soccer team’s tipping habits, CP was not raising an issue of group concern, but rather an individual gripe
 - By making his statement, CP did not seek to induce group action
 - No other facts would cause the Board to infer that CP had a goal of inducing group action
- ***Not protected***
 - Tips are not wages from the employer – solely between passenger and skycap

Management Takeaways

- There needs to be more than the word “we” for “concert.”
- There also needs to be more than a statement made in a group setting or with other employees present.
- And, a statement does not qualify as PCA solely because it is both made with other employees present and includes “we.”
- Instead, an individual employee’s statement to a supervisor must either bring a “truly group complaint” regarding a workplace issue to management’s attention, or the totality of the circumstances must support a reasonable inference of group action.
- Employers should carefully consider the nature of employee complaints and the circumstances surrounding such complaints.
- Note Board majority’s focus on (1) customer relations and (2) control of customer vs. employer re: tip amounts.

Union Perspective

- Case is a scaleback of employee protections.
- Board minimized key facts of the case which taken as a whole, demonstrate the activity was concerted and for the purpose of mutual aid and protection.
 - Employees' relied heavily on tips as a source of wages, the complaint was in the context of a group setting, the other skycaps had a mutual interest in the complaint as they would be sharing the tips, the skycaps clearly agreed with the complaint as they collectively refused to perform the work, the supervisor recognized this as a valid concern and assured that he would review the matter with the airlines and terminal managers, and the Employer explicitly terminated Greenridge because he raised the tipping concern in front of other skycaps. All of this indicates an intent to induce group action.
- Decision outlines a checklist of factors that imposes significant and unwarranted restrictions on what counts as concerted activity.
- The Board explicitly overruled its 2011 decision in the *WorldMark by Wyndham*.
 - In that case, the Board majority articulated a rule that, as a matter of law, "an employee who protests publicly in a group meeting *is* engaged in initiating group action," even if the protest is made by and on behalf of the employee himself.
- Footnote foreshadows the Board's intent to further erode this area of the law.

Protected Concerted Activity

***Quicken Loans, Inc.*, 367 NLRB No. 112 (April 10, 2019)**

- Conversation between two mortgage bankers in the men's room
- **Mortgage Banker 1 (Woods):** A former client from four years prior had been “dropped in his pipeline” and had been trying unsuccessfully to reach a Client Specialist. The client “should get in touch with a fucking Client Care Specialist and quit wasting my fucking time.”
- **MB 2 - Charging Party (Laff):** “Understood why [Woods] was frustrated.”
- Supervisor overheard the conversation and issued an email reminding employees “Never, EVER, should we be swearing in the bathroom especially about clients. Also please refrain from stating that clients are wasting your (swear word*) [sic] time.”

Protected Concerted Activity

Quicken Loans, Inc., 367 NLRB No. 112 (April 10, 2019)

- After an investigation, the Employer discharged Mortgage Banker 2 (Laff)
- The Region issued complaint alleging that Respondent discharged Laff because of his protected concerted conversation with Woods
- ***Not concerted***
 - Woods' statement was only a personal complaint not intended to induce group action
 - No evidence that the routing of clients was an issue of group concern
- ***Not protected***
 - No evidence the referral was based on any Quicken Loans policy or practice
 - No evidence that referrals adversely affected their compensation

Management Takeaways

- Full Disclosure: HJ was on the defense on this one.
- 3-0 Board determined that no concerted activity took place after granular fact review:
 - “Woods complained that the client call was a waste of *his time*, but there is no evidence that he sought thereby to move Laff to join him in protest of the routing incident” and
 - “Similarly, Laff’s response did not suggest any contemplation of group action.”
- 2-0 Board: No history of individual complaints contributed to finding of “no evidence that the employees had a goal of “mutual aid or protection.”
- Board also rejected the ALJ’s adverse inference against the Company for not calling Woods as a witness, even though Woods was still employed with the Company.
 - No adverse inference should be drawn against a party that refuses to call a hostile witness.
- “Mere griping” cases are back!

Union Perspective

- The Board picks up where *Alstate* left off and continues to narrow the circumstances under which individual conduct will be considered PCA.
- Dangerous precedent to summarily dismiss or otherwise characterize group concerns about terms and conditions of employment as “mere griping.”
- Case illustrates the perils of issuing complaint on a bad set of facts. The Board will be taking advantage of every opportunity it gets to overturn good law and to redefine the Meyers standards
- Both *Alstate* and *Quicken Loan* demonstrate that Board will be reading the Act far more literally than prior Boards.

Employee vs. Independent Contractor



Employee versus Independent Contractor

Section 2(3) defines “employee.” It also lists exclusions: farm workers, domestic workers, supervisors, railway workers, and ***independent contractors***.

Section 7’s right to organize or to engage in protected concerted activity extend only to employees, not independent contractors.

Section 8’s protections extend only to employees, not independent contractors.

Employee versus Independent Contractor

***SuperShuttle*, 367 NLRB No. 75 (2019)**

Overruled prior Board law (*FedEx Home Delivery*, 361 NLRB 610 (2014), enf. denied 849 F.3d 1123 (D.C. Cir. 2017) and “returned” to the common law test for who is an independent contractor and not an employee.

Flaw in *FedEx* – Entrepreneurial opportunity just one of several factors

Employee versus Independent Contractor

Common law test for independent contractor – 10 factors

- Extent of control over the franchisees
- Method of payment
- Ownership of the vans
- Lack of supervision
- The parties' beliefs as to the relationship

Franchisees “have significant opportunity for economic gain and significant risk of loss”

Management Takeaways

- Many industries will be affected by this decision, including various “gig economy” companies, BUT remember this is just an NLRB standard and there are many other IC standards (e.g., California’s ABC test).
- Notable for rejecting the idea that the test is ultimately determined by dependence of a company’s model on the effort of contractors.
- Particularly relevant to app-based companies where relevant workers are free to log on to and off of “the system” at will.
- Three big factors: (1) control over their own day-to-day tasks, (2) owning principal instrumentality; and (3) could select their own fares to maximize their profits.

Management Takeaways

- *Uber Technologies, Inc.* Advice Memorandum, Case 13-CA-163062 (April 16, 2019):
 - “The drivers had significant entrepreneurial opportunity by virtue of their near complete control of their cars and work schedules, together with freedom to choose log-in locations and to work for competitors of Uber. On any given day, at any free moment, drivers could decide how best to serve their economic objectives: by fulfilling ride requests through the App, working for a competing ride-share service, or pursuing a different venture altogether.”
- However, IC is still a multifactor test.
- Consider how *each and every aspect* of your IC system enhances or detracts from entrepreneurial opportunity to “work smarter.”

Employee vs. Independent Contractor

Union Takeaways

*What would you do if your
paycheck looked like this
after one week of work?*

GROSS PAY
\$ 450.92
DEDUCTIONS
\$-464.98
NET PAY
\$-14.06

Total Trip Gross: \$450.92

Ins Cargo	\$-25.00
DTR FEES	\$-3.85
Fuel Deduction	\$-33.27
Fuel Deduction	\$-71.41
Fuel Deduction	\$-76.45
Ins Auto & Occ Acc	\$-95.00
Truck Lease	\$-50.00
Parking	\$-10.00
Ins PD	\$-50.00
Permit & Lic Fees	\$-50.00

Net Amount: \$-14.06

#WAGETHEFT



Union Takeaways

- *Supershuttle* decision has no application to state or federal wage and hour laws and in CA, *Dynamex Operations West* remains in full force and effect.
- *Supershuttle* ignores worker realities in current “gig economy” and makes it more likely for employees to be misclassified as an IC.
- Message is that companies will be rewarded for continuing to degrade working conditions and to shift risks to their workers by outsourcing work or misclassifying employees as IC’s.
- Union’s should pay particular attention and be ready to address arguments emphasizing the worker's opportunity to realize a profit or loss from his/her efforts.
 - Analyze the level of company control in the context of its effects on entrepreneurial opportunity.
- “Entrepreneurial opportunity” is by no means a “super factor” or “trump” card and given the strong analysis in the dissent in this case, Unions should be prepared to challenge this new standard

Employee vs. Independent Contractor

Union Takeaways

- *Uber Technologies, Inc.* Advice Memorandum, Case 13-CA-163062 (April 16, 2019):
- Stretches concept of entrepreneurialism. Here the Uber drivers' only 'entrepreneurial' choice is how many hours to keep the app open.
- Uber, however, decides the amount of the fare as well the drivers' share, the types of rides that are available, the requirement that the drivers have no substitutes, as well as a requirement that the driver place an Uber decal on the car.
- It is clear that it will be up to the States to protect employees from being misclassified and Unions should continue to be vigilant in pursuing wage and hour lawsuits in state courts.

Does Misclassification Violate Section 8(a)(1) of the National Labor Relations Act?



DUTY OF FAIR REPRESENTATION

Duty of Fair Representation

The Duty of Fair Representation

A union breaches its duty of fair representation under Section 8(b)(1)(A) if it engages in conduct which is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967).

In the context of grievance handling, if a union loses track of a grievance or fails to communicate with a grievant over the status of her case, it may defend that its conduct was merely negligent, as opposed to arbitrary or in bad faith.

Duty of Fair Representation

GC Memo 19-01

If a union loses track of a grievance and asserts mere negligence, the union must show that it has **“established, reasonable procedures or systems in place to track grievances.”** If it does not, that is arbitrary conduct that breaches the DFR. If there is a system, the union must explain how that system failed.

If a union fails to communicate with a grievant over decisions related to her case or fails to respond to the grievant’s questions about her case or to provide her with requested information, that is arbitrary conduct in breach of the DFR.

Duty of Fair Representation

GC Memo 19-05

No change over a union's decision whether to pursue a grievance. Union continue to be afforded a "wide range of reasonableness" in representing the bargaining unit. *Ford Motor Co. v. Hoffman*, 345 U.S. 330, 338 (1954).

Management Takeaways

- Interesting, system-review approach to DFR
- Not shocking if you flip analogy over to 8(a)(5) and employer tries to use some “system excuse” for failure to notify union, provide information, or engage in bargaining.
- Refer to Division of Advice letter in *SEIU United Healthcare Workers (Kaiser Los Angeles Medical Center)*, Case 31-CB-217249, Dec. 12, 2018.
 - Violation because union’s “system for tracking grievances failed in one of its most basic functions: keeping grievants and the Union officials who are responsible for processing grievances apprised of a grievance’s status.”

Union Perspective

- GC 19-01 and 19-05 are essentially a continuation of the GC's attack on unions.
- The GC seems to have a disproportionate interest in pursuing members' cases against their unions, despite unionization being at an all time low. This, as opposed to focusing resources on combating the plethora of violations employers commit against workers attempting to exercise their Section 7 rights.
- Substantially lowers the bar as to what constitutes arbitrary, discriminatory, bad-faith or gross negligence (essentially asserting that "negligence" alone is sufficient).
- Fails to consider that one of the main reasons for the Board's historical approach on accepting these unintentional errors as mere negligence was due to the fact that union officials are not full time agents, nor trained as attorneys charged with developing a deep understanding the law.
- Also doesn't account for the fact that union representatives are often not full-time officials and only have a slight portion of their working hours devoted to union business.
- Memos erroneously assume unions set out to intentionally ignore the bargaining unit

Union Perspective

- The immediate effect of these directives will be to see an increase of 8 (b)(1)(A) cases against unions . Most unfounded and prematurely filed.
- Unions should be very diligent in documenting all of their communications with grievants.
- Unions should evaluate their tracking system for grievances and strictly adhere to those systems.
- This will have a substantial economic impact on unions as they will have to divert resources from representing employees in order to defend against increased litigation.

JOINT EMPLOYMENT

NLRB HAS STARTED THE PROCESS FOR RULE MAKING

Browning-Ferris, 362 NLRB No. 186 (2015)

NLRB Board (3-2 decision):

- Adopted new standard (although similar/identical to standard applied in the 1980s)
- Possessing *authority* to control terms and conditions of employment is sufficient to show that the entity is a joint employer; *exercise* of control is not required.
- Direct and immediate exercise of control is not required, *indirect control* over terms and conditions of employment is sufficient.

Joint Employment

- **Hy-Brand Industrial Contractors, Ltd., 365 NLRB No. 156 (2017)** – NLRB overruled *Browning-Ferris Industries of California, Inc., 362 NLRB No. 186 (2015)* on the standard to determine a joint employer relationship BUT, subsequently, VACATED at 366 NLRB No. 26 (2018).
- Thus, ***Browning Ferris*** still current law and now Board is seeking comments to change the standard through rulemaking
- Comment #4: “Indirect control” is really now direct control in the NPRM!

MANDATORY ARBITRATION AGREEMENTS

Arbitration Agreements

- Mandatory waiver of class/collective lawsuits in agreements *lawful*
- However, portions of the Arbitration Agreement can still be **unlawful**:
 - Overbroad Confidentiality Provision – balancing test
 - Restricts access to the NLRB – reasonably interpretation based on totality of the context of the language

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Q and A



From: [Anastas, Maria](#)
To: [Kwon, Christy](#); [Monica Guizar](#); [McFerran, Lauren](#); [Krafts, Andrew J.](#)
Cc: [Thomas A. Lenz \(TLenz@aalrr.com\)](#); [Meyers, Mary](#); (b) (6)
Subject: RE: [Reminder] RE: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am
Date: Monday, April 12, 2021 4:22:21 PM

Got it; thank you.

From: Kwon, Christy <Christy.Kwon@nlrb.gov>
Sent: Monday, April 12, 2021 12:59 PM
To: Monica Guizar <monica.guizar@seiu.org>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Anastas, Maria <Maria.Anastas@ogletreedeakins.com>; Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>; Anastas, Maria <Maria.Anastas@ogletreedeakins.com>
Cc: Thomas A. Lenz (TLenz@aalrr.com) <TLenz@aalrr.com>; Meyers, Mary <Mary.Meyers@nlrb.gov>; (b) (6) (b) (6) @calawyers.org
Subject: RE: [Reminder] RE: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am

[Caution: Email received from external source]

Hello All -- Attached and below is the outline of responsibilities as we discussed. I've also attached two prior powerpoints so that you can see what we've done in the past. The deadline to get materials to me is **June 15, 2021**. I'd like to schedule a call right before the panel so that we can confirm the final format. Please let me know if **Monday, July 12, noon (PST)** does not work for you. If you have any questions, please contact me and Tom. Thank you! Christy and Tom

- I. State of the Board – **McFerran** (10 min overview)
 - a. R-Case & C-Case Rulemaking (McFerran intro)
 - b. Zoom hearings – r and c cases (min) (McFerran)
 - c. Mail v. manual elections, Aspirus Keweenaw (McFerran)
 - d. Outreach (McFerran) (part of intro)
 - e. Spanish language website
 - f.
- II. Union and PCA Discrimination/Termination Cases (20 min total)(**Monica**)
 - a. Reemphasis on PCA by GC, especially regarding health and safety and COVID-19
 - b. Discussion of some recent cases
 - c.
- III. Work Rules (30 min total) – (**Maria**)
 - a. Caesar's – email
 - b. Union Insignia – Walmart

- c. Access?
- d. Tweets can violate 8a1
- e. Johnnie's Poultry – changes to standard? (comments solicited)
- f. Investigations – confidentiality issues
- g. Arbitration Agreements – confidentiality provisions
- h.

IV. Pro Act (Monica)(10 minutes)

V. Q&A & Misc (5 minutes)

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From: [Thomas A. Lenz](#)
To: [Kwon, Christy](#)
Cc: [Monica Guizar](#); [McFerran, Lauren](#); [Anastas, Maria](#); [Krafts, Andrew J.](#); [Anastas, Maria](#); [Meyers, Mary](#); (b) (6)
Subject: Re: [Panel description] RE: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am
Date: Friday, April 16, 2021 1:51:15 PM

Thanks, Christy. I'm good with this but interested to know if anyone has proposed edits. Best,
Tom

Sent from my iPhone

On Apr 16, 2021, at 10:34, Kwon, Christy <Christy.Kwon@nrlb.gov> wrote:

Dear All, I need to submit a panel description to CLA. While drafting it, it occurred me to that we should touch on collective bargaining rights (especially information requests and bargaining) as it relates to COVID-19. I know that more unions are asking for information related to COVID infections and vaccinations as it attempts to bargain for safer working conditions. I believe this area will continue to evolve. **So, Monica**, I know you had offered to do a bit on 8(a)(5) bargaining like you did for the ABA, and I was hoping you could incorporate some of that. The issues I'm seeing are when one party or another insists on in-person negotiations, information requests involving COVID, unilateral changes and bargaining around health and safety especially in the essential businesses/industries that are public facing such as bus drivers, healthcare, and I presume hospitality will come more into play as we start opening up more. Also, there is a lot of PCA around these issues, as well as other "political issues" if you want to address that in the PCA section. I can also help develop these areas as well with you.

Also, if anyone has edits for [the panel description below](#), please reply with edits today. I apologize for the short notice and thank you in advance for your edits/comments, if any. -Christy

NLRB Under The Biden Administration

The Chairman of the National Labor Relations Board under the Biden Administration, along with two experienced union-side and management side labor attorneys, will address the current state of the Board as it transitions from the Trump Board's policies on a wide range of topics including the reestablishment of outreach to the public, status of rule-making and mail ballot elections, the Acting General Counsel's renewed emphasis on protecting concerted activities and collective bargaining as it relates to Covid-19 health and safety issues, and the lawfulness of certain workplace rules regarding email usage, wearing union insignia, confidentiality, and investigations.

From: Kwon, Christy

Sent: Monday, April 12, 2021 12:59 PM

To: Monica Guizar <monica.guizar@seiu.org>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Anastas, Maria <Maria.Anastas@ogletree.com>; Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>; Anastas, Maria <Maria.Anastas@ogletreedeakins.com>

Cc: Thomas A. Lenz (TLenz@aalrr.com) <TLenz@aalrr.com>; Meyers, Mary <Mary.Meyers@nlrb.gov>; (b) (6) (b) (6) @calawyers.org>

Subject: RE: [Reminder] RE: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am

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From: [Thomas A. Lenz](#)
To: [Kwon, Christy](#)
Cc: [Monica Guizar](#); [McFerran, Lauren](#); [Anastas, Maria](#); [Krafts, Andrew J.](#); [Anastas, Maria](#); [Meyers, Mary](#); (b) (6)
Subject: Re: [Panel description] RE: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am
Date: Friday, April 16, 2021 4:21:31 PM

Fine with me. Thank you, Christy.

Sent from my iPad

On Apr 16, 2021, at 13:18, Kwon, Christy <Christy.Kwon@nlrb.gov> wrote:

Hi everyone, based on feedback from Chairman McFerran regarding her limitations to speak on certain topics in her official capacity I have edited the description (see below). Also, we will not include any specific discussion about COVID related PCA, information requests, or bargaining, as those issues can come before her. A general discussion of PCA, as we planned, is fine. I think we can mention GC Memo 21-03 (attached) which is a public document. Thank you and I welcome any other comments!

NLRB Under The Biden Administration

The Chairman of the National Labor Relations Board under the Biden Administration, joined by experienced union-side and management side labor attorneys, will address the current state of the Board as it transitions from the Trump Board's policies on a wide range of topics including current outreach initiatives, status of rule-making and mail ballot elections, protected concerted activities, and workplace rules regarding email usage, union insignia, confidentiality, and investigations.

From: Kwon, Christy
Sent: Friday, April 16, 2021 10:34 AM
To: Monica Guizar <monica.guizar@seiu.org>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Anastas, Maria <Maria.Anastas@ogletree.com>; Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>; Anastas, Maria <Maria.Anastas@ogletreedeakins.com>
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and bargaining) as it relates to COVID-19. I know that more unions are asking for information related to COVID infections and vaccinations as it attempts to bargain for safer working conditions. I believe this area will continue to evolve. **So, Monica**, I know you had offered to do a bit on 8(a)(5) bargaining like you did for the ABA, and I was hoping you could incorporate some of that. The issues I'm seeing are when one party or another insists on in-person negotiations, information requests involving COVID, unilateral changes and bargaining around health and safety especially in the essential businesses/industries that are public facing such as bus drivers, healthcare, and I presume hospitality will come more into play as we start opening up more. Also, there is a lot of PCA around these issues, as well as other "political issues" if you want to address that in the PCA section. I can also help develop these areas as well with you.

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From: Kwon, Christy

Sent: Monday, April 12, 2021 12:59 PM

To: Monica Guizar <monica.guizar@seiu.org>; McFerran, Lauren <Lauren.McFerran@nrlb.gov>; Anastas, Maria <Maria.Anastas@ogletree.com>; Krafts, Andrew J. <Andrew.Krafts@nrlb.gov>; Anastas, Maria <Maria.Anastas@ogletreedeakins.com>

Cc: Thomas A. Lenz <TLenz@aallr.com> <TLenz@aallr.com>; Meyers, Mary <Mary.Meyers@nrlb.gov>; (b) (6) <(b) (6)@calawyers.org>

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- I. State of the Board – **McFerran** (10 min overview)
 - a. R-Case & C-Case Rulemaking (McFerran intro)
 - b. Zoom hearings – r and c cases (min) (McFerran)
 - c. Mail v. manual elections, Aspirus Keweenaw (McFerran)
 - d. Outreach (McFerran) (part of intro)
 - e. Spanish language website
 - f.
- II. Union and PCA Discrimination/Termination Cases (20 min total)(**Monica**)
 - a. Reemphasis on PCA by GC, especially regarding health and safety and COVID-19
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 - c.
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 - e. Johnnie's Poultry – changes to standard? (comments solicited)
 - f. Investigations – confidentiality issues
 - g. Arbitration Agreements – confidentiality provisions
 - h.
- IV. Pro Act (**Monica**)(10 minutes)
- V. Q&A & Misc (5 minutes)

<4 - SUBJECT Effectuation of the National Labor Relations Act Through Vigorous En.doc>

2021 WL 1239011 (N.L.R.B.G.C.)

TO: All Regional Directors, Officers-in-Charge, and Resident Officers

SUBJECT: Effectuation of the National Labor Relations Act Through Vigorous Enforcement of the Mutual Aid or Protection and Inherently Concerted Doctrines

MEMORANDUM GC 21-03

March 31, 2021

*1 In 1937, the United States Supreme Court made clear that, under Section 7 of the National Labor Relations Act, “Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. [...] That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents.” *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 34 (1937). Section 8 prohibits discrimination against employees who exercise their Section 7 rights.

Eighty-four years ago, the Supreme Court upheld the constitutionality of the NLRA, guaranteeing workers the fundamental right to self-organize at the workplace. Since the passage of the Wagner Act, experience has made it clear that employee demands for this fundamental right do not materialize out of thin air. Often employees engaging in concerted activities for the mutual aid or protection of one another recognize the benefits of group action or collective bargaining. While protected, concerted activity can be a precursor to a union campaign, it also can occur outside of the context of union activity, such as in instances where employees raise safety concerns to their employer, or seek protection from government agencies. Nonetheless, constraints and limitations placed on employees engaging in concerted activities, and adverse actions taken against them in response to their protected activity, serve to effectively undermine the declared policy of the United States.

As a consequence of the COVID pandemic, health and safety issues have unfortunately become more prevalent at the workplace. This memorandum focuses on protecting employees’ fundamental rights by examining an interrelated framework of basic, yet pivotal, legal constructs.

I. Mutual Aid or Protection in Today’s Landscape

Section 7 grants employees the right to engage in “concerted” activities for the purpose of “mutual aid or protection.” The latter element “focuses on the *goal* of concerted activity,” specifically, “whether there is a link between the activity and matters concerning the workplace or employees’ interests as employees.”¹ The Board analyzes whether an activity is for “mutual aid or protection” using an objective standard; thus, employees’ subjective motives are irrelevant.² The “mutual aid or protection” clause covers employee efforts to “improve their lot as employees through channels outside the immediate employee-employer relationship,” as well as activities “in support of employees of employers other than their own.”³

*2 Section 7 protection applies not only to union activity and labor organizing; it may also cover the fundamental precursor actions that form the cornerstone of any other actions the employees may take, like discussing or protesting wages, hours, and working conditions. Additionally, employee advocacy can have the goal of “mutual aid or protection” even when the employees have not explicitly connected their activity to workplace concerns.⁴ This includes employees’ political and social justice advocacy when the subject matter has a direct nexus to employees’ “interests as employees.”⁵ Examples include: a hotel employee’s interview with a journalist about how earning the minimum wage affected her and employees like her, and how legislation to increase the minimum wage would affect them; a “solo” strike by a pizza-shop employee to attend a convention and demonstration where she and others advocated for a \$15-per-hour minimum; and protests in response to a sudden crackdown on undocumented immigrants and the possible revival of workplace immigration raids.⁶ In each instance, the employees’ conduct had the objective goal of improving their workplaces and concerned issues within their employer’s control, like payment of wages and employers’ willingness to hire immigrants. Going forward, employee activity regarding a variety of societal issues will be reviewed to determine if those actions constitute mutual aid or protection under Section 7 of

the Act.

I look forward to robustly enforcing the Act's provisions that protect employees' Section 7 rights with full knowledge that recent decisions issued by the current Board have restricted those protections. Notably, the majority opinions in two decisions--*Alstate Maintenance*⁷ and *Quicken Loans*⁸--applied "mutual aid or protection" narrowly. Nevertheless, the Board majority has left avenues for demonstrating mutual aid or protection that should be fully utilized.

In *Alstate*, a Board majority found that an airport skycap's comment to his supervisor that he and other skycaps did not want to assist with a soccer team's equipment because "[w]e did a similar job a year prior and did not receive a tip for it," was not for mutual aid or protection, even though the bulk of skycaps' compensation came from customer tips.⁹ The majority reasoned that skycaps' tips were within the customers' sole discretion, a "matter from which the skycaps' employer is essentially detached," and that the comment was not aimed at improving skycaps' lot as employees, e.g., through recourse to administrative, legislative, or judicial forums.¹⁰ The majority observed, however, that skycaps' comments about customer tips would be for "mutual aid or protection" if they were aimed at changing employer policies or practices.¹¹

*3 In *Quicken Loans*, a Board majority found that an employee's comments to a coworker about having to handle a customer call that was a "waste of time" was not for the purpose of mutual aid or protection because there was no evidence that the conversation concerned improving working conditions.¹² Specifically, the majority found there was an "evidentiary hole in the record," i.e., no record evidence that the customer referral was based on an employer policy or practice, that the two employees or any other employee had experienced or anticipated similar referrals, or that such referrals adversely affected their terms and conditions of employment.¹³

Although the Board majorities in *Alstate* and *Quicken Loans* failed to find that the employees' actions were in furtherance of their mutual aid or protection, they identified a number of factors which, if present, would have favored a finding of protection. Going forward, under the framework of the law as presently articulated, cases involving retaliation against concerted employee conduct will be vigorously pursued, where these and other factors exist to tie workers' protests to their interests as employees.

II. Finding Certain Conduct to be Inherently Concerted

Protected, concerted activity -- either standing alone or as a precursor to organizational activity -- begins with a conversation among employees. Recognizing this, the Board has long described concerted activity "in terms of interaction among employees."¹⁴ Conduct generally becomes concerted when it is "engaged in with or on the authority of other employees,"¹⁵ or when an employee seeks either "to initiate or to induce or to prepare for group action."¹⁶ However expressed, the touchstone of concert revolves around employees' intention to band together to improve their wages or working conditions. Thus, employees may act in concert when discussing shared concerns about terms and conditions of employment, even when the discussion "in its inception involves only a speaker and a listener, for such activity is an indispensable preliminary step to employee self-organization."¹⁷

While contemplation of group action may be indicative of concerted activity, it is not a required element. Employee discussions of certain "vital elements of employment"¹⁸ often raise concerns that are pivotal to their collective interests, which, in some circumstances, may spur organizational considerations. Concern about these crucial common issues may render group discussions inherently concerted, "even if group action is nascent or not yet contemplated."¹⁹ No "magic words" are required for concert to attach, and a finding of concerted activity is not dependent on the extent to which other employees agree with the complaint or join in the protest.²⁰ The Board has adopted this "settled doctrine" of inherent concert for decades, noting that unit employees' right to protect their fundamental, collective interest in these central issues, "could be rendered meaningless if employers were free to retaliate against employees on the ground that the retaliatory action was directed only at a discussion."²¹ Although the Board in recent years, most prominently in *Alstate*, has narrowed the circumstances under which individual complaints are considered concerted activity, the doctrine of inherent concert retains its vigor.

*4 To date, the Board has held that employee discussions were inherently concerted where they involved only certain vital categories of workplace life. Employees who share information with each other about wages or wage differentials may be acting in an inherently concerted manner, insofar as, "[i]t is obvious that higher wages are a frequent objective of organizational activity."²² Discussion among employees of changes in their work schedules implicates vital elements of

employment such as hours and working conditions, and thus “are as likely to spawn collective action as the discussion of wages.”²³ Similarly, job security is a “vital term and condition of employment,” which involves “the very existence of an employment relationship,” e.g., whether an employee may be laid off or discharged.²⁴ The Division of Advice has further concluded that discussions concerning workplace health and safety²⁵ and racial discrimination²⁶ may be inherently concerted. In the future, I will be considering these and other appropriate applications of the inherently concerted doctrine in suitable cases.

Our focus here is on the means to safeguard employee rights to engage in protected, concerted activity in order to redress an employer’s retaliatory response. Recognition of these measures will afford the Agency the means by which to better serve the policies of the United States as set forth in Section 1 of the National Labor Relations Act, to “eliminate the causes of certain substantial obstructions to the free flow of commerce [...] by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.”

Peter Sung Ohr
Acting General Counsel

OFFICE OF GENERAL COUNSEL

NATIONAL LABOR RELATIONS BOARD (N.L.R.B.)

Footnotes

¹ [Fresh & Easy Neighborhood Market, Inc.](#), 361 NLRB 151, 153 (2014) (emphasis in original).

² *Id.*

³ [Eastex, Inc. v. NLRB](#), 437 U.S. 556, 559-60, 565 (1978).

⁴ See [Petrochem Insulation](#), 330 NLRB 47, 49 (1999) (union filing environmental objections and challenging issuance of permits was for mutual aid or protection because objective was to secure living wage for employees at non-union construction companies), *enforced*, 240 F.3d 26 (D.C. Cir. 2001); [Tradesmen International](#), 332 NLRB 1158, 1159-60 (2000) (union organizer’s testimony before city building standards board urging application of surety bond requirement to labor supply firm was for mutual aid or protection because testimony “designed to protect local unionized companies and, in turn, the job opportunities of their employees” by leveling the playing field between union and non-union contractors), *enforcement denied*, 275 F.3d 1137 (D.C. Cir. 2002); [Nellis Cab Co.](#), 362 NLRB 1587, 1588 (2015) (extended break during which taxicab drivers drove down boulevard honking and flashing lights while refusing to pick up passengers was for mutual aid or protection where object was to protest taxicab authority’s possible issuance of additional medallions, which would likely decrease drivers’ pay).

⁵ [Eastex](#), 437 U.S. at 565-67.

⁶ [Days Inn & Suites](#), Case 15-CA-147655, Advice Memorandum dated Aug. 10, 2015; [Papa John’s Pizza](#), Case 10-CA-192458, Advice Memorandum dated Sept. 8, 2017; [JVS Masonry, Inc.](#), Cases 27-CA-194772, et al., Advice Memorandum dated Aug. 30, 2017; [EZ Industrial Solutions, LLC](#), Case 07-CA-193475, Advice Memorandum dated Aug. 30, 2017.

⁷ 367 NLRB No. 68 (2019); see *id.*, slip op. at 9-18 (McFerran, dissenting).

⁸ 367 NLRB No. 112 (2019).

⁹ *Id.*, slip op. at 8-9.

¹⁰ *Id.*, slip op. at 8. In her dissent, Member McFerran observed that the skycaps, like the rest of the tipped workforce (the majority of whom are restaurant workers), are entitled to a federal minimum wage of \$2.13 per hour, and that for most of these employees, including the skycaps here, “discussions about the amount of tips directly concern their compensation, are integral to their

‘interests as employees,’ and are thus for ‘mutual aid or protection.’” *Id.*, slip op. at 16 (McFerran, dissenting) (quoting *Eastex*, above, at 567).

11 *Id.*, slip op. at 9.

12 367 NLRB No. 112, slip op. at 3. Then-Member McFerran did not reach the “mutual aid or protection” question in *Quicken Loans* because she agreed that the employees’ conversation was not concerted and would dismiss on that ground alone. *Id.*, slip op. at 3 n.8.

13 *Id.*, slip op. at 3.

14 *Meyers Industries*, 268 NLRB 493, 494 (1984) (*Meyers I*), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. den. 474 U.S. 948 (1985).

15 *Id.* at 497.

16 *Meyers Industries*, 281 NLRB 882, 887 (1986) (*Meyers II*), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988).

17 *Meyers I*, 268 NLRB at 494 (quoting *Root-Carlin, Inc.*, 92 NLRB 1313, 1314 (1951)).

18 *Aroostook County Regional Ophthalmology Center*, 317 NLRB 218, 220 (1995), *enf. den. in part on other grounds*, 81 F.3d 209 (D.C. Cir. 1996).

19 *Hoodview Vending Co.*, 359 NLRB 355, 357 (2012) (*Hoodview I*) (finding discussions regarding job security inherently concerted).

20 *Fresh & Easy Neighborhood Market*, 361 NLRB at 154.

21 *Hoodview I*, 359 NLRB at 358. While the doctrine is long-standing, depending on the factual circumstances, it remains better articulated as an alternative argument in cases where concert may be proven by traditional means.

22 *Trayco of S.C., Inc.*, 297 NLRB 630, 634. (1990), *enf. denied mem.* 927 F.2d 597 (4th Cir. 1991) (quoting *Jeannette Corp. v. NLRB*, 532 F.2d 916, 918 (3d Cir. 1976)).

23 *Aroostook County*, 317 NLRB at 220.

24 *Hoodview Vending Co.*, 362 NLRB 690 n.1 (2015) (*Hoodview II*) (discussions of job security, like wages, are inherently concerted; employer violated Section 8(a)(1) by discharging employee for discussing another employee’s job security). See also *Food Services of America, Inc.*, 360 NLRB 1012, 1014-15 (2014) (same); *Component Bar Products*, 364 NLRB No. 140, slip op. at 1 n.1 (2016) (same).

25 *North West Rural Electric Cooperative*, Case 18-CA-150605, Advice Memorandum dated September 21, 2015, at 9-12. In *North West Rural Electric Cooperative*, 366 NLRB No. 132, slip op. 1, n.1 (2018), the Board declined to pass on the judge’s conclusion that an employee’s discussion about safety issues in the electrical lineman industry over Facebook was inherently concerted, in light of an alternate theory of concert.

26 *Milford Center*, Case 01-CA-156820, Advice Memorandum dated January 20, 2016, at 9-12. The Division of Advice noted that, “[a]n employer’s racial bias or discrimination [...] implicates all terms and conditions of employment—including, but not limited to, those the Board has already identified as being inherently concerted, such as wages, work schedules, and job security.” *Id.* at 11.

2021 WL 1239011 (N.L.R.B.G.C.)

From: [Monica Guizar](#)
To: [Kwon, Christy](#)
Cc: [McFerran, Lauren](#); [Anastas, Maria](#); [Krafts, Andrew J.](#); [Anastas, Maria](#); [Thomas A. Lenz \(TLenz@aalrr.com\)](#); [Meyers, Mary](#); (b) (6)
Subject: Re: [Panel description] RE: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am
Date: Monday, April 19, 2021 4:00:46 PM

Thanks, Christy!

Monica Guizar
Associate General Counsel
Service Employees International Union (SEIU)
3055 Wilshire Blvd, Suite 1050
Los Angeles, CA 90010
Cell Phone: (213) 393-4303
Fax: (213) 381-7348

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From: [Wilma Liebman](#)
To: [McFerran](#), [Lauren](#), [Blado](#), [Kayla](#), [Josh Eidelson](#), [Marshall Babson](#), [Craig Becker](#)
Cc: [John Colwell](#)
Subject: LERA webinar July 13 --
Date: Friday, April 30, 2021 4:25:37 PM

For your records. We'll be back in touch as time nears. Thank you again!

The Biden NLRB: What's Ahead and Challenges

A discussion moderated by Josh Eidelson, a prominent labor reporter with Bloomberg, with Lauren McFerran, appointed by Pres. Biden as chair of the NLRB, with two distinguished former Board members, Marshall Babson, appointed by Pres. Reagan, now representing management, and Craig Becker, appointed by Pres. Obama, now the general counsel of the AFL-CIO. The discussion will cover a range of issues including politics and appointments, doctrinal change and policy oscillation at the Board, adjudication vs. rule-making, what specific challenges and issues can we expect ahead, the continuing relevance of this Depression era law

Moderator: [Josh Eidelson](#), Labor Reporter at Bloomberg

Panelists:

- * [Lauren McFerran](#), NLRB Chairman
- * [Craig Becker](#), AFL-CIO General Counsel (and former NLRB member)
- * [Marshall B. Babson](#), Counsel at Seyfarth Shaw, LLP (and former NLRB member)

And relatedly, on July 22 at noon EDT:

The War Labor Board and its Legacy: a conversation with historian Ronald Schatz

Professor and LERA Past President Tom Kochan will interview Ron Schatz, about his new book *The Labor Board Crew: Remaking Worker-Employer Relations from Pearl Harbor to the Reagan Era*, about the National War Labor Board, its distinguished members and its legacy for US labor-management relations and conflict resolution more broadly. Professor Carrie Menkel-Meadow will discuss the book and the War Labor Board from the perspective of the legal fields of negotiations and conflict resolution.

[Ronald W. Schatz](#)

[Professor of History](#)

[Wesleyan University](#)

Thomas A. Kochan

George M. Bunker Professor

MIT Sloan School of Management

Carrie Menkel-Meadow

Distinguished Professor of Law (and Political Science)

University of California Irvine Law School

From: (b) (6)
To: "Monica Guizar"; McFerran, Lauren; maria.anastas@ogletree.com
Cc: (b) (6); Kwon, Christy
Subject: Corrected: 36th Annual Labor and Employment Annual Meeting - Speaker email
Date: Wednesday, May 5, 2021 8:35:02 PM
Attachments: [image001.png](#)
[CLA LaborAndEmploymentLaw Template.pptx](#)
[MATERIALS DOS AND DONTs.docx](#)
[Virtual Presenter Checklist.docx](#)
[CLE Speaker Release Form - 2021 L&E Annual Meeting.docx](#)
Importance: High

Dear Speakers:

Thank you for agreeing to be a speaker at the CLA Labor and Employment Law Section's program, the **"36th Annual Meeting of the Labor and Employment Law Section"** to be held on July 15-16, 2021. We appreciate your expertise and the generosity of your time. We have selected a virtual platform to provide our attendees with an engaging and interactive experience.

Please note all applicable deadlines to submit program materials, speaker biographies, headshots and the CLE Release form. All related forms and Information are attached.

PROGRAM INFORMATION

Title: NLRB Updates Under the Biden Administration
Date: Thursday, July 15, 2021
Time: 10:30 am - 11:45 am
Liaison: Christy Kwon, christy.kwon@nrlb.gov
Moderator: Christy Kwon, christy.kwon@nrlb.gov
Speakers: Lauren McFerran, Lauren.McFerran@nrlb.gov
Maria Anastas, maria.anastas@ogletree.com
Monica Guizar, monica.guizar@seiu.org

PANEL REHEARSAL

We will be conducting a dress rehearsal before the event to ensure everything is in working order.

****If you have PowerPoint Presentation, please be ready to provide them at our rehearsal****

Please coordinate with your co-panelists and choose ***only one*** desired date and time for your rehearsal from the below doodle poll link. The rehearsal must be done with all speakers together and each speaker must agree to the time and date selected.

Doodle Link: (b) (6)

The Zoom link for the rehearsal and presentation will be emailed to you at a later date.

*****Please review the Virtual Presenter Checklist attached.**

SPEAKER REGISTRATION

Your complimentary registration has been completed. A week before the event, you will receive an email through Pheedloop containing your log-in information. If you do not initially see the confirmation email, please reference your junk and spam folders for correspondence coming from the Pheedloop platform.

SPEAKER BIO/HEADSHOT/COPYRIGHT RELEASE FORM (Deadline: Friday, May 21, 2021)

1. **CLE Speaker License and Release Form (attached)** must be received from each speaker.
2. **Speaker Bio & Headshot** from each speaker for event website and materials.
 0. Please submit a brief (no longer than one page) personal bio.
 1. Please submit a headshot (200x200 jpeg).

PROGRAM MATERIALS (Deadline: Wednesday, June 30, 2021)

- Program Materials (Word or PPT format only) **Power Point Template Attached**
- Written materials are required for all panels offering MCLE credit.
- Copies or printouts of copyrighted materials of third parties (such as cases or statutes printed from Lexis or Westlaw) are not allowed.
- Original writings are preferred and should be formatted in **Word** or **PowerPoint** file format.
- A PowerPoint template will be sent to you at a later date.

We cannot accept scanned documents or PDF's, nor can we include copyrighted materials (unless accompanied by a signed release).

GUIDELINES

DO	DON'T
DO submit a Word or PowerPoint document. See the attached templates.	DON'T submit a PDF or other document format
DO submit original content concerning recent current developments relating to the program topic.	DON'T submit materials from another source, including newspaper articles, articles published in another place, or materials from LexisNexis, WestLaw or a similar source
DO submit materials of 5 or more pages in length per panel, excluding cover pages and speaker biographies	DON'T submit materials of less than 5 pages in length, or fail to submit materials at all, unless the other speakers for your program are providing materials of more than 5 pages in length
DO , If appropriate, include a list of web page links	DON'T include copies of web pages or documents/forms found on the Internet even when they are freely accessible to the public. These are not considered "original works"; instead create a reference list with links.
DO , if appropriate, include a reference list of cases or statutes	DON'T include copies of actual cases and statutes, instead create a reference list.
DO limit your use of photos and images in your PowerPoint presentation to what is necessary to present the	DON'T include graphics or images that function as design elements or are otherwise not essential to convey the content of your program.

| content of your program. |

Once again, thank you for joining us as a speaker. If you have any questions, please do not hesitate to email me.

Thanks,

(b) (6)

(b) (6) | (b) (6)

California Lawyers Association

400 Capitol Mall, Suite 650 | Sacramento, CA 95814

O: (b) (6) | (b) (6) [@calawyers.org](mailto:(b) (6)@calawyers.org)

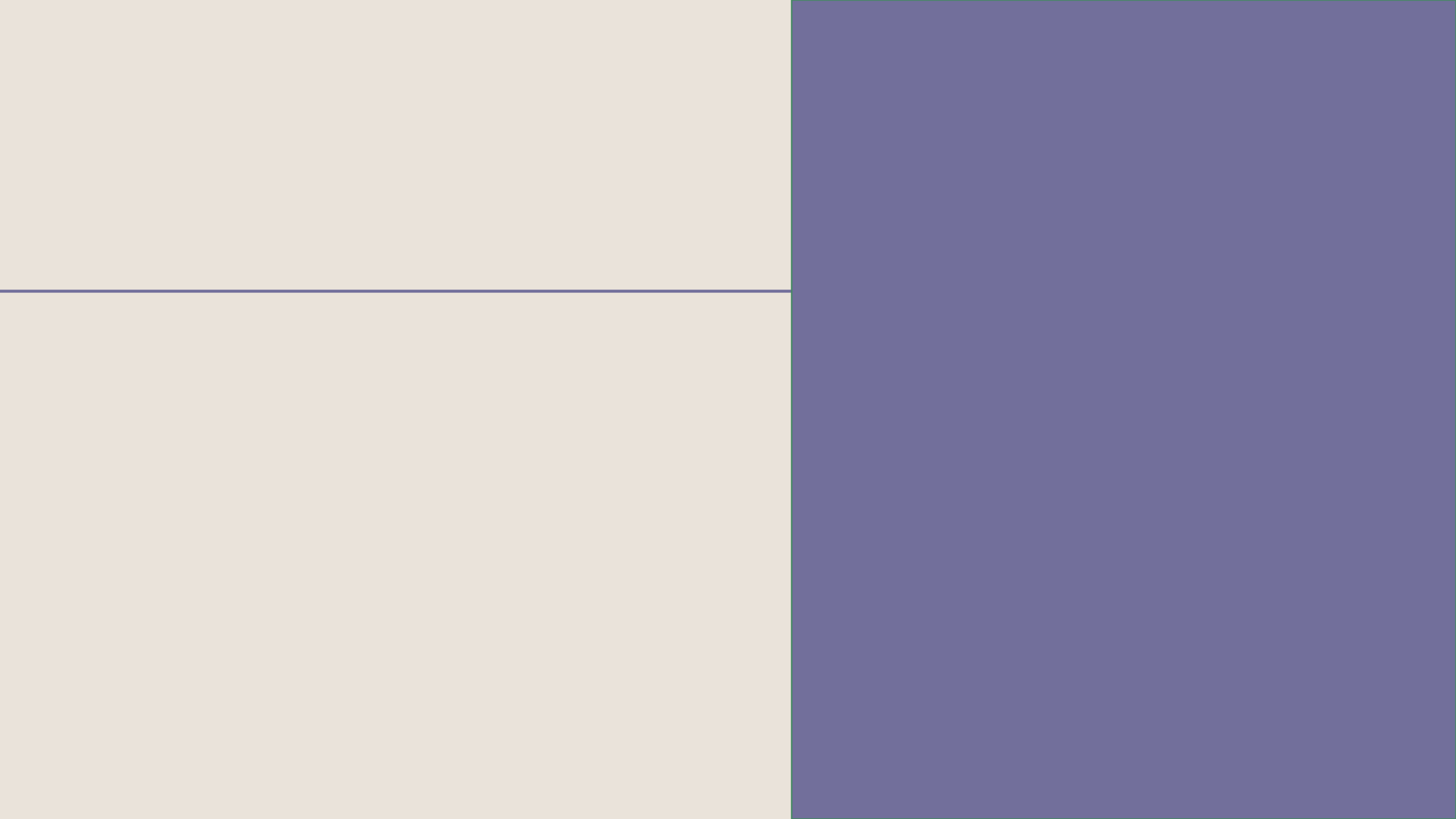


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MATERIALS DO'S and DON'TS

IMPORTANT INFORMATION ABOUT PROGRAM MATERIALS!

We only accept materials that adhere to these guidelines.

1. Original writings are preferred and be formatted in a **MS Word document** OR **PowerPoint document ONLY**
2. Include a one-page biography for each speaker, in an MS Word format.
3. We cannot accept documents that are scanned
4. We cannot accept documents that include copyrighted materials (**unless accompanied by a signed release**)
5. Server may bounce back email attachments exceeding 7MG in size, so we suggest sending with a return receipt request

DO	DON'T
DO submit a Word or PowerPoint document. See the attached templates.	DON'T submit a PDF or other document format
DO submit original content concerning recent current developments relating to the program topic.	DON'T submit materials from another source, including newspaper articles, articles published in another place, or materials from LexisNexis, WestLaw or a similar source
DO submit materials of 5 or more pages in length, excluding cover pages and speaker biographies	DON'T submit materials of less than 5 pages in length, or fail to submit materials at all, unless the other speakers for your program are providing materials of more than 5 pages in length
DO , If appropriate, include a list of web page links	DON'T include copies of web pages or documents/forms found on the Internet even when they are freely accessible to the public. These are not considered "original works"; instead create a reference list with links.
DO , if appropriate, include a reference list of cases or statutes	DON'T include copies of actual cases and statutes, instead create a reference list.
DO limit your use of photos and images in your PowerPoint presentation to what is necessary to present the content of your program.	DON'T include graphics or images that function as design elements or are otherwise not essential to convey the content of your program.

Virtual Presenter Checklist

Getting Started

1. Make sure you are seated comfortably.
2. Have water or tea close by to drink at any time.

Computer

1. Ensure that the [Zoom Application is downloaded](#) to your desktop. Also, check to ensure that you are running the [latest version of Zoom](#)
2. If possible, use a wired internet connection. If that's not possible, ensure that you're close enough to your WiFi router to ensure a solid connection.
3. Avoid using a Virtual Machine, VPN, or Remote Desktop
4. Reboot your computer a few hours before the webinar to avoid any automated updates that could launch during the virtual event
5. Close all other applications on your computer that you won't need for the virtual event.
6. If you're using a mouse, make sure the batteries are fresh (or it's freshly charged).
7. Have a hard copy print-out of your slides as a backup.

Sound

1. Close the door to your office (or whatever room you are presenting from).
2. Mute your microphone when you're not speaking.
3. Make sure this microphone is turned on and that any other microphones are off or muted.
4. Check that your voice is being broadcast. (Headsets are recommended).
5. Close any windows that might cause outside noises to be broadcast.
6. Mute your cell phone so you aren't interrupted during the program.

Video

For tips on how to look good on video, check out this video:

<https://www.youtube.com/watch?v=Txvcz0bUG5Q>, or review the steps below:

1. Check that your webcam is on.
2. Check that the lighting is good and is in front of you.
3. Try to position your webcam so that it is at your eye-level rather than above or below.
4. Position yourself close enough to the webcam so that your face is centered and the top of your head and your shoulders are visible.
5. We recommend not having a distracting Zoom background. If not using a Zoom background, make sure your environment is tidy.



**The California Lawyers Association
Labor and Employment Law Section
36th Annual Meeting of the Labor and Employment Section
July 15-16, 2021**

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- C. The right to use my name, voice, photograph, biographical information, and likeness in connection with the exercise of rights granted in Sections A and B, provided that any such uses are made in connection with the Association's educational purpose.
- D. The right to license to third parties any of the rights granted in Sections A, B, and C, provided that such licenses are consistent with the terms hereof.

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jurisdiction of courts located in California, which will be the exclusive forum for any disputes arising under this license.

I affirm that I have not accepted or paid, and agree not to accept or to pay, any money, service, or other consideration for the inclusion of any matter in my Presentation or in the Program Materials.

Subject to all of the foregoing, I hereby release and discharge the Association, including without limitation the governing board of the Association, and its officers, employees, agents, volunteers, and representatives, from any and all claims, demands, and causes of action that I may have against it for use of my Presentation, the Audio/Video Materials, or the Program Materials, including, but not limited to, any claims based on the right of privacy, the right of publicity, copyright, libel, or slander. With the exception of materials that are in the public domain, and acknowledging that simply because materials are publicly available on the internet does not place these materials in the public domain, I warrant that I am the sole owner of, or have a license for, all rights in my Presentation and the Program Materials, that my Presentation and the Program Materials do not infringe the copyright or other property rights of any third party, and that I have full power to grant the rights in this license.

Signature: _____ Print Name: _____

Address: _____ City/State/Zip: _____

Phone Number: _____ Date: _____

Sign and return by **May 21, 2021**
(b) (6) at
(b) (6) @calawyers.org

From: (b) (6)
To: [Kwon, Christy](#)
Cc: ["Monica Guizar"](#); [Anastas, Maria](#); [McFerran, Lauren](#); [Krafts, Andrew J.](#)
Subject: RE: 36th Annual Labor and Employment Annual Meeting - Speaker email
Date: Thursday, May 20, 2021 4:54:55 PM
Attachments: [image002.png](#)
[image003.png](#)

Hello Christy,

Thank you so much for everyone's bio and headshot.

Thanks,

(b) (6)

(b) (6) | (b) (6)

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O: (b) (6) | C: (b) (6) | (b) (6) [@calawyers.org](mailto:calawyers.org)



From: Kwon, Christy <Christy.Kwon@nlrb.gov>
Sent: Thursday, May 20, 2021 1:17 PM
To: (b) (6) | (b) (6) [@calawyers.org](mailto:calawyers.org)
Cc: 'Monica Guizar' <monica.guizar@seiu.org>; Anastas, Maria <maria.anastas@ogletree.com>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>
Subject: RE: 36th Annual Labor and Employment Annual Meeting - Speaker email

Dear (b) (6), please find attached the bios and headshots of the speakers on the Labor Panel. If they separately email you their own bios or headshots, please use their version instead.

Thank you!

Christy

From: (b) (6) | (b) (6) [@calawyers.org](mailto:calawyers.org)
Sent: Thursday, May 20, 2021 9:31 AM
To: (b) (6) | (b) (6) [@calawyers.org](mailto:calawyers.org)
Subject: 36th Annual Labor and Employment Annual Meeting - Speaker email
Importance: High

Dear Speakers:

This is a reminder email that your CLE Speaker Release Form, bio and headshot are due tomorrow, May 21st.

SPEAKER BIO/HEADSHOT/COPYRIGHT RELEASE FORM (Deadline: Friday, May 21, 2021)

1. **CLE Speaker License and Release Form (attached)** must be received from each speaker.
A digital signature will suffice.
2. **Speaker Bio & Headshot** from each speaker for event website and materials.
 - Please submit a brief (no longer than one page) personal bio.
 - Please submit a headshot (200x200 jpeg).

Once again, thank you for joining us as a speaker. If you have any questions, please do not hesitate to email me.

Thanks,

(b) (6)

(b) (6) | (b) (6)

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Monica Guizar is an Associate General Counsel with the Service Employees International Union (SEIU). She grew up in Pico Rivera - the eldest daughter of Mexican immigrant parents. She has dedicated the entirety of her legal career, over twenty years, to representing workers, unions and immigrants. Prior to joining SEIU, Ms. Guizar was an attorney and shareholder with the union-side law firm of Weinberg, Roger, & Rosenfeld. Her practice areas with the firm included traditional labor, employment and immigration law in both the private and public sector. She regularly litigated labor and employment cases before the state and federal courts, handled labor arbitrations and regularly appeared before administrative labor agencies. She has extensive experience dealing with issues that impact immigrant workers and organizing immigrant workers. Ms. Guizar was previously the Employment Policy Attorney with the National Immigration Law Center, ran a private law practice, and worked as an associate attorney with the Law Office of Enrique Arevalo. She regularly speaks on panels involving labor and employment law and immigration issues in the workplace. In 2019, Ms. Guizar was the recipient of the Wage Justice Center's Advocate of the Year Award. She has served on the Board of Directors of the AFL-CIO Lawyers Coordinating Committee; the Working Hands Legal Clinic in Chicago, IL; the Latina Lawyers Bar Association (LLBA) – is a Past President of LLBA; the National Lawyers Guild –LA chapter; and the Neighborhood Legal Services of Los Angeles County. She has also served on the California State Bar's Labor and Employment Section's Executive Committee. Presently she serves and as an Advisor on the California Lawyers Association Labor and Employment Law Section. Ms. Guizar received her undergraduate degrees in Spanish Literature and Criminology, Law and Society from U.C. Irvine in 1995.

Maria Anastas is a traditional labor law expert and former NLRB attorney. The overwhelming majority of her practice is focused on representing employers before the NLRB and during union organizing drives, corporate campaigns and collective bargaining. She has earned a national reputation for handling hundreds of union organizing drives. Maria has a broad range of experience handling traditional labor law matters in virtually every industry, including healthcare, manufacturing, warehousing, retail, hospitality, service sector, maritime, trucking and higher education.

Maria is a member of the firm's traditional labor practice steering committee and speaks extensively at firm and other conferences regarding labor law developments and her significant expertise handling a wide range of traditional labor matters in California and other states.

Chairman Lauren McFerran served as a Member of the NLRB from December 17, 2014 until December 16, 2019. On July 29, 2020, the Senate confirmed her renomination as a Board Member for a term expiring on December 16, 2024.

On January 20, 2021, President Joseph R. Biden named Ms. McFerran Chairman of the National Labor Relations Board.

Previous to her appointment to the NLRB, Ms. McFerran served as Chief Labor Counsel for the Senate Committee on Health, Education, Labor, and Pensions (HELP Committee) and had also served the Committee as Deputy Staff Director under Senator Tom Harkin. She began on the HELP Committee as Senior Labor Counsel for Senator Ted Kennedy. Before her work in the United States Senate, Ms. McFerran was an associate at Bredhoff & Kaiser, P.L.L.C. and served as a law clerk for Chief Judge

Carolyn Dineen King on the United States Court of Appeals for the Fifth Circuit. Ms. McFerran received a B.A. from Rice University and a J.D. from Yale Law School.

From: [Monica Guizar](#)
To: [Kwon Christy](#)
Cc: [McFerran Lauren](#); [Anastas Maria](#); [Krafts Andrew J.](#); [Anastas Maria](#); [Thomas A. Lenz \(TLenz@aalrr.com\)](#); [Meyers Mary](#); (b) (6)
Subject: Re: [Panel description] RE: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am
Date: Wednesday, June 9, 2021 5:23:11 PM

No problem at all.

Thanks,
Monica

Monica Guizar
Associate General Counsel
Service Employees International Union (SEIU)
3055 Wilshire Blvd, Suite 1050
Los Angeles, CA 90010
Cell Phone: (213) 393-4303
Fax: (213) 381-7348

On Wed, Jun 9, 2021 at 5:09 PM Kwon, Christy <Christy.Kwon@nlrb.gov> wrote:

Hi Monica, I think based on Chairman McFerran's ethics obligations (she shouldn't hear any issues that might come before her) we are going to pass on some of the 8a5 issues I had mentioned before. Sorry for any confusion I may have caused!

Christy

From: Monica Guizar <monica.guizar@seiu.org>
Sent: Wednesday, June 9, 2021 2:08 PM
To: Kwon, Christy <Christy.Kwon@nlrb.gov>
Cc: McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Anastas, Maria <Maria.Anastas@ogletree.com>; Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>; Anastas, Maria <Maria.Anastas@ogletreedekins.com>; Thomas A. Lenz (TLenz@aalrr.com) <TLenz@aalrr.com>; Meyers, Mary <Mary.Meyers@nlrb.gov>; (b) (6) <(b) (6)> <@calawyers.org>
Subject: Re: [Panel description] RE: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am

Hi Christy,

Sounds good. I'll send you my slides on Friday so we have time to work on the other 8a5 issues you mentioned. The panel description looks fine to me.

Thanks,

Monica

Monica Guizar
Associate General Counsel
Service Employees International Union (SEIU)
3055 Wilshire Blvd, Suite 1050
Los Angeles, CA 90010
Cell Phone: (213) 393-4303
Fax: (213) 381-7348

On Fri, Apr 16, 2021 at 1:34 PM Kwon, Christy <Christy.Kwon@nlrb.gov> wrote:

Dear All, I need to submit a panel description to CLA. While drafting it, it occurred me to that we should touch on collective bargaining rights (especially information requests and bargaining) as it relates to COVID-19. I know that more unions are asking for information related to COVID infections and vaccinations as it attempts to bargain for safer working conditions. I believe this area will continue to evolve. **So, Monica**, I know you had offered to do a bit on 8(a)(5) bargaining like you did for the ABA, and I was hoping you could incorporate some of that. The issues I'm seeing are when one party or another insists on in-person negotiations, information requests involving COVID, unilateral changes and bargaining around health and safety especially in the essential businesses/industries that are public facing such as bus drivers, healthcare, and I presume hospitality will come more into play as we start opening up more. Also, there is a lot of PCA around these issues, as well as other "political issues" if you want to address that in the PCA section. I can also help develop these areas as well with you.

Also, if anyone has edits for the panel description below, please reply with edits today. I apologize for the short notice and thank you in advance for

your edits/comments, if any. -Christy

NLRB Under The Biden Administration

The Chairman of the National Labor Relations Board under the Biden Administration, along with two experienced union-side and management side labor attorneys, will address the current state of the Board as it transitions from the Trump Board's policies on a wide range of topics including the reestablishment of outreach to the public, status of rule-making and mail ballot elections, the Acting General Counsel's renewed emphasis on protecting concerted activities and collective bargaining as it relates to Covid-19 health and safety issues, and the lawfulness of certain workplace rules regarding email usage, wearing union insignia, confidentiality, and investigations.

From: Kwon, Christy

Sent: Monday, April 12, 2021 12:59 PM

To: Monica Guizar <monica.guizar@seiu.org>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Anastas, Maria

<Maria.Anastas@ogletree.com>; Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>; Anastas, Maria <Maria.Anastas@ogletreedeakins.com>

Cc: Thomas A. Lenz <TLenz@aallr.com> <TLenz@aallr.com>; Meyers, Mary <Mary.Meyers@nlrb.gov>; (b) (6)

<(b) (6) @calawyers.org>

Subject: RE: [Reminder] RE: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am

Hello All -- Attached and below is the outline of responsibilities as we discussed. I've also attached two prior powerpoints so that you can see what we've done in the past. The deadline to get materials to me is **June 15, 2021**. I'd like to schedule a call right before the panel so that we can confirm the final format. Please let me know if **Monday, July 12, noon (PST)** does not work for you. If you have any questions, please contact me and Tom. Thank you! Christy and Tom

I. State of the Board – McFerran (10 min overview)

- a. R-Case & C-Case Rulemaking (McFerran intro)
- b. Zoom hearings – r and c cases (min) (McFerran)
- c. Mail v. manual elections, Aspirus Keweenaw (McFerran)
- d. Outreach (McFerran) (part of intro)
- e. Spanish language website
- f.

II. Union and PCA Discrimination/Termination Cases (20 min total)(Monica)

- a. Reemphasis on PCA by GC, especially regarding health and safety and COVID-19
- b. Discussion of some recent cases
- c.

III. Work Rules (30 min total) – (Maria)

- a. Caesar's – email
- b. Union Insignia – Walmart
- c. Access?
- d. Tweets can violate 8a1
- e. Johnnie's Poultry – changes to standard? (comments solicited)
- f. Investigations – confidentiality issues
- g. Arbitration Agreements – confidentiality provisions
- h.

IV. Pro Act (Monica)(10 minutes)

V. Q&A & Misc (5 minutes)

From: (b) (6)
To: (b) (6)
Cc: monica.guizar@seiu.org; [McFerran, Lauren](#); RpcarltonMPH@gmail.com; (b) (6);
npierce@gunder.com; tmehr@visionlegalinc.com; jshaw@shawlawgroup.com
Subject: 36th Annual Labor and Employment Annual Meeting - Speaker Release Form
Date: Tuesday, June 22, 2021 6:00:04 PM
Attachments: [image003.png](#)
[CLE Speaker Release Form - 2021 L&E Annual Meeting.docx](#)

Hello Speakers,

As of today, I am still missing your CLE Speaker License and Release Form. Please sign the attached form and return to me at your earliest convenience.

A digital signature will suffice.

SPEAKER BIO/HEADSHOT/COPYRIGHT RELEASE FORM (Deadline: Friday, May 21, 2021)

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2. **Speaker Bio & Headshot** from each speaker for event website and materials.
 0. Please submit a brief (no longer than one page) personal bio.
 1. Please submit a headshot (200x200 jpeg).

Thanks,

(b) (6)

(b) (6) | (b) (6)

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**The California Lawyers Association
Labor and Employment Law Section
36th Annual Meeting of the Labor and Employment Section
July 15-16, 2021**

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- C. The right to use my name, voice, photograph, biographical information, and likeness in connection with the exercise of rights granted in Sections A and B, provided that any such uses are made in connection with the Association's educational purpose.
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I affirm that I have not accepted or paid, and agree not to accept or to pay, any money, service, or other consideration for the inclusion of any matter in my Presentation or in the Program Materials.

Subject to all of the foregoing, I hereby release and discharge the Association, including without limitation the governing board of the Association, and its officers, employees, agents, volunteers, and representatives, from any and all claims, demands, and causes of action that I may have against it for use of my Presentation, the Audio/Video Materials, or the Program Materials, including, but not limited to, any claims based on the right of privacy, the right of publicity, copyright, libel, or slander. With the exception of materials that are in the public domain, and acknowledging that simply because materials are publicly available on the internet does not place these materials in the public domain, I warrant that I am the sole owner of, or have a license for, all rights in my Presentation and the Program Materials, that my Presentation and the Program Materials do not infringe the copyright or other property rights of any third party, and that I have full power to grant the rights in this license.

Signature: _____ Print Name: _____

Address: _____ City/State/Zip: _____

Phone Number: _____ Date: _____

Sign and return by **May 21, 2021**
(b) (6) at
(b) (6) **@calawyers.org**

From: [Blado, Kayla](#)
To: [David Prouty](#)
Cc: [Cruz, Jeffrey N.](#); [Naill, Adam](#); [McFerran, Lauren](#); [Krafts, Andrew J.](#); [Celine McNicholas](#)
Subject: RE: Clips on your nomination
Date: Wednesday, June 23, 2021 10:10:44 AM

FYI, I was able to connect with the White House press office and have that typo fixed in your release:
<https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/22/president-biden-announces-three-key-nominations-2/>

Kayla Blado (she/her)
Press Secretary
National Labor Relations Board
202-412-9602
Follow us on Twitter: [@NLRB](#)/[@NLRBGC](#)
En español: [@NLRBes](#)/[@NLRBGCes](#)

From: Blado, Kayla
Sent: Wednesday, June 23, 2021 10:03 AM
To: David Prouty <(b) (6)>
Cc: Cruz, Jeffrey N. <Jeffrey.Cruz@nlrb.gov>; Naill, Adam <Adam.Naill@nlrb.gov>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>; Celine McNicholas <cmcnicholas@epi.org>
Subject: Clips on your nomination

Hi David, it was nice speaking with you. Here are some clips surrounding your nomination and other issues surrounding the future of the Board. I'll send you periodic updates as I see them.

News articles on your nomination:

<https://thehill.com/regulation/labor/559690-biden-to-tap-seiu-lawyer-to-serve-on-nlrb?rl=1>
<https://financialpost.com/pmnbusiness/pmnbiden-set-to-nominate-union-lawyer-to-seat-on-u-s-labor-board-source>
<https://www.law360.com/employment-authority/articles/1396609> (pasted below)
<https://news.bloomberglaw.com/daily-labor-report/seiu-lawyer-prouty-tapped-for-federal-labor-board-seat-by-biden> (pasted below)
<https://www.politico.com/newsletters/west-wing-playbook/2021/06/22/the-90s-called-they-want-their-joe-biden-back-493334>

White House press release: (They didn't put a space between your first and last name, so I can try to contact them to see if they can fix it.)

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/22/president-biden-announces-three-key-nominations-2/>

union response:

<https://www.goiam.org/press-releases/machinists-union-issues-statement-of-support-for-nlrb-nominee-david-prouty/>

<https://www.afscme.org/press/releases/2021/afscme-applauds-prouty-nomination-for-the-nlrp>
<https://twitter.com/RichardTrumka/status/1407434739112464390>
<https://twitter.com/32BJSEIU/status/1407451658972508160>
<https://twitter.com/Teamsters/status/1407456619244490754>

General pieces on the future of the Board:

<https://www.natlawreview.com/article/coming-soon-to-workforce-near-you-nlrp>
<https://www.natlawreview.com/article/it-time-to-review-and-consider-updates-to-your-personnel-policies>
<https://www.law360.com/employment-authority/articles/1393860> (Pasted below)
<https://btlaw.com/en/insights/blogs/labor-relations/2021/watch-out-three-big-issues-all-companies-need-to-monitor-at-the-nlrp>

Biden Taps SEIU Lawyer Prouty for Federal Labor Board Seat (1)

June 22, 2021, 4:45 PM; Updated: June 22, 2021, 6:00 PM

Marks Biden's second pick for NLRB seats

Prouty known for work with baseball union

President Joe Biden will nominate David Prouty, a prominent union attorney, for a seat on the National Labor Relations Board.

Prouty is general counsel of Service Employees International Union Local 32BJ, the New York-based local that represents more than 175,000 service workers on the East Coast. If confirmed, he would fill the seat of Republican member William Emanuel, whose term expires in August.

The White House announced Prouty's nomination Tuesday.

Prouty previously had been discussed for an open Democratic NLRB seat during the Trump administration, but a nomination wasn't made. The Biden administration in May nominated Gwynne Wilcox, an attorney at the union-side firm Levy Ratner, to fill the vacant seat, which was last occupied in 2018.

If Prouty and Wilcox are confirmed, it would end four years of Republican control of the five-seat federal labor board, a period during which it issued numerous pro-employer decisions and a series of business-friendly rulemakings.

Prouty could play an instrumental role in a Democratic majority revisiting Trump-era decisions and actions that favored employers. That includes a rule on the legal standard by which companies are jointly responsible for labor violations by their franchisees or contractors, as well as Trump-era changes to the NLRB's procedures for union elections.

A new Democratic majority on the NLRB would be supported by a Democratic general counsel, who's empowered to bring new cases before the board.

Prouty was the top attorney for the Major League Baseball Players Association, which represents professional baseball players, from 2013 to 2017. Before that, he was the general counsel of the UNITE HERE union and served on the NLRB union advisory panel in the late 1990s.

(Updated with additional reporting.)

To contact the reporter on this story: Ian Kullgren in Washington at ikullgren@bloombergindustry.com

To contact the editors responsible for this story: John Lauinger at jlauinger@bloomberglaw.com; Martha Mueller Neff at mmuellerneff@bloomberglaw.com; Travis Tritten at ttritten@bgov.com

BREAKING: Biden Taps SEIU Atty For Labor Board Seat

By [Braden Campbell](#) · June 22, 2021, 4:38 PM EDT

President Joe Biden on Tuesday said he plans to tap union attorney David Prouty for a seat on the National Labor Relations Board before a fifth spot even opens, laying the groundwork to secure a Democratic majority at the agency as soon as August.

David Prouty

Prouty is the general counsel of Service Employee International Union Local 32BJ, a New York City-based union of property service workers with more than 175,000 members. Tuesday's announcement comes a little less than a month after Biden nominated union attorney Gwynne Wilcox to join the board.

The board currently consists of Chair Lauren McFerran, a Democrat, and Republicans John Ring, Marvin Kaplan and Bill Emanuel, with one vacancy. Emanuel's term expires in late August. If Wilcox and Prouty are confirmed, their arrivals would give Democrats an NLRB majority for the first time since 2017.

--Editing by Haylee Pearl.

Analysis

NLRB Regulatory Agenda Signals New Chapter For Agency

By [Kevin Stawicki](#) · June 14, 2021, 7:08 PM EDT

What's most notable about the [National Labor Relations Board's](#) new regulatory agenda may not be what rules the board has up its sleeve for the near future, but what Trump-era proposals it's putting on hold, labor experts

told Law360.

The NLRB said it's pursuing two new rules on videoconferencing and ethics disclosures that many attorneys said were important, but expected. In addition, according to a [biannual report released Friday](#) by the [Office of Management and Budget](#), the board is pausing two proposals pursued under the administration of former President Donald Trump on union access limits and case representation rules. Those shelved actions are worth a closer look because of how the issues substantively impact labor-management relations, experts said.

For over a year, the Republican board had [sought to limit unions' access](#) to employer property. In its representation case rule, the board was looking to scrap employers' requirement to provide eligible voters' email addresses and phone numbers to unions. The White House agency's Office of Information and Regulatory Affairs placed those proposals in an inactive status on Friday. While that doesn't mean the rules are necessarily dead, it does mean they're not currently being pursued.

"The access proposal that was shelved is a notable because the board for the last few years has issued a series of cases that affirm employers' property rights and it seemed like it was about to culminate that with the final regulation," said Jim Plunkett of management-side firm [Ogletree Deakins Nash Smoak & Stewart PC](#). "It was all speculation about where they were headed with this proposal, but we can't even speculate anymore because it looks like it's not even going to happen."

Placing the proposal on hold means that the board — when it's controlled by Democrats after member William Emanuel's term ends in August and if labor lawyer Gwynne Wilcox [becomes the fifth member](#) — can scrap the union access proposal altogether or revise it to be more union-friendly, experts said.

"This may set the table for a new rule that would be the opposite rule that we expected from the Trump board that would grant greater access rights to

non-employee union organizers," Plunkett said, adding that such a revised rule would most likely come in the OMB's fall regulatory agenda published in December.

But shifting course on union access limits while the board still has a Republican majority makes shelving the proposal a peculiar move, said former NLRB Chairman William B. Gould IV. The board still maintains a Republican majority with Chairman Lauren McFerran as the sole Democrat.

"I'm a little puzzled because there won't be the votes to stop this until the next Democratic member is confirmed," Gould said. "The board must be making it inactive in deference to the chairman's views because she's the only one on the board now who would express that view on union access limits."

But Daniel B. Rojas of union-side firm [Rothner Segall & Greenstone](#) said the paused rule just reflects how the Republican majority knows its time is running out.

"Rulemaking takes time and it is very unlikely that a Democratic, union-friendly board majority would adopt either of the proposed anti-union regulations," Rojas said. "Instead of continuing to pursue a hopeless cause, the Trump appointees who still form the board-majority would rather use their limited time in power to implement new labor policy using the more-traditional method of issuing new board decisions."

Also gleaned from Friday's regulatory agenda was that the board is pausing efforts related to representation case procedures that would have amended the board's regulations to stop requiring employers to turn over voters' personal email addresses and phone numbers. Labor attorneys agreed that by not creating new representation case rules, there can finally be some semblance of stability to the ever-changing labor landscape.

"For representation rules, many practitioners would be content with some stability and predictability after what feels like years and years of changes

either being proposed, implemented or undone," said David Weldon, an attorney at management-side firm [Barnes & Thornburg LLP](#).

While the shelved proposals offer a glimpse into the agency's future under the soon-to-be Democratic board, the rules that are currently in the works also shed some light on the path forward for the NLRB.

One of those rules seeks to clarify how videoconferencing should be used in proceedings after the coronavirus pandemic, during which video hearings became almost universal when the board recognized the compelling circumstances that required avoiding in-person proceedings.

Coming up with a remote hearing rule will be of significance to any practitioner figuring out how to conduct business post-COVID, Weldon said.

"Like courts around the country, the board seems to be warming up to the idea that the 'old' way of in-person proceedings may be in need of change," he said. "If videoconference is a viable alternative that saves everyone time and money, why not use it? Hopefully the proposed rules will prioritize the need for flexibility."

Rothner Segall's Rojas said the changes could also potentially benefit low-wage workers who may be fearful of participating in hearings with their employer or physically testifying to the board due to issues like lack of time or transportation.

The board is also finalizing a rule requiring parties to report their corporate relationships in order to streamline the recusal process, according to the OMB report. The NLRB said it wants to require companies to disclose their subsidiaries at the board review stage to facilitate the board's recusal process, an extension of existing rules requiring companies to submit this information during unfair labor practice proceedings.

"To enhance the administration of its ethics program and identify potential conflicts of interest, the [NLRB] will be amending its procedural rules to

require disclosure of parties' and other entities' organizational relationships," the abstract of the final rule states.

Labor experts said the new rule is likely a response to how the board has recently attempted to deal with conflicts of interest with its members and parties appearing before them.

The board has grappled with a series of [ethics concerns](#) over the past few years, in particular with Republican members maintaining that they, and not the agency's internal ethics adviser, have final say on whether to sit out labor disputes over connections to an involved party.

Former Chairman Gould said the upcoming rule may be in direct response to questions about NLRB member Emanuel's participation in a 2017 decision called Hy-Brand Industrial Contractors Ltd. that launched the board's review of its ethics policies. An inspector general review after the decision came down said Emanuel should have recused from the case.

"On the face of it, this seems to be an attempt to resolve the Emanuel situation," Gould said.

--Additional reporting by Braden Campbell and Tim Ryan. Editing by Tim Ruel.

Kayla Blado (she/her)

Press Secretary

National Labor Relations Board

202-412-9602

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En español: [@NLRBes](#)/[@NLRBGCes](#)

From: (b) (6)
To: (b) (6)
Cc: maria.anastas@ogletree.com; Kwon.Christy; Joseph@chorayoungllp.com; tcohen@sheppardmullin.com; ykim@gblawllp.com; Branden.Butler@dfec.ca.gov; monica.guizar@seiu.org; McFerran.Lauren; tmehr@visionlegalinc.com; jbraxton@martensonlaw.com
Subject: 36th Annual Meeting of the Labor and Employment Law Section - Rehearsal
Date: Wednesday, June 23, 2021 12:35:16 PM
Attachments: [image001.png](#)

Hello Speakers,

If you would still like to schedule a rehearsal for your panel, please contact me to arrange a date and time.

PANEL REHEARSAL

We will be conducting a dress rehearsal before the event to ensure everything is in working order.

****If you have PowerPoint Presentation, please be ready to provide them at our rehearsal****

Thanks,

Tiffany

(b) (6) | (b) (6)

California Lawyers Association

400 Capitol Mall, Suite 650 | Sacramento, CA 95814

O: (b) (6) | C: (b) (6) | (b) (6) [@calawyers.org](mailto:(b) (6)@calawyers.org)



From: [Wilma Liebman](#)
To: [McFerran, Lauren](#); [Craig Becker](#); [Marshall Babson](#); jeidelson@bloomberg.net
Subject: Re: Registration Open for Two New LERA Webinars on 7/13 and 7/21
Date: Tuesday, June 29, 2021 9:44:46 PM

One more thing. To register as a non LERA member, select "no thanks" and then "next". It is written in the instructional sentence at the top of that page.

Sent from my iPad

On Jun 29, 2021, at 9:41 PM, Wilma Liebman <(b) (6)> wrote:

Just making sure you all have this. You should register so you'll get the zoom link. Thanks again for doing this!

Wilma

Sent from my iPad

Begin forwarded message:

From: LERA <lera@memberclicks-mail.net>
Date: June 29, 2021 at 3:02:25 PM EDT
To: (b) (6)
Subject: Registration Open for Two New LERA Webinars on 7/13 and 7/21
Reply-To: LERAoffice@illinois.edu

Wilma Liebman,

The LERA Industry Council and Interest Section Webinar Series continues this July. You are invited to register, at no charge, for two upcoming one-hour programs; please see full details below. We hope you can make it!

Best,

Emily Smith
LERA Executive Director



Tuesday, July 13, 2021, 12 – 1 pm Eastern Time (New York Time)

Sponsored by these LERA Interest Sections: Collective Bargaining Network, Dispute Resolution, Labor and Employment Law, and Labor Studies and Union Research

The Biden NLRB: What's Ahead and Challenges

A discussion moderated by Josh Eidelson, a prominent labor reporter with Bloomberg, with Lauren McFerran, appointed by Pres. Biden as chair of the NLRB, with two distinguished former Board members, Marshall Babson, appointed by Pres. Reagan, now representing management, and Craig Becker, appointed by Pres. Obama, now the general counsel of the AFL-CIO. The discussion will cover a range of issues including politics and appointments, doctrinal change and policy oscillation at the Board, adjudication vs. rule-making, what specific challenges and issues can we expect ahead, the continuing relevance of this Depression era law.

Moderator: [Josh Eidelson](#), Labor Reporter at Bloomberg

Panelists:

- [Lauren McFerran](#), NLRB Chairman
- [Craig Becker](#), AFL-CIO General Counsel (and former NLRB member)
- [Marshall B. Babson](#), Counsel at Seyfarth Shaw, LLP (and former NLRB member)



Thursday, July 22, 2021, 12 – 1 pm Eastern Time (New York Time)

Sponsored by these LERA Interest Sections: Collective Bargaining Network, Dispute Resolution, Labor and Employment Law, and Labor Studies and Union Research

The War Labor Board and Its Legacy: A Conversation with Historian Ronald Schatz

Professor and LERA Past President Tom Kochan will interview Ron Schatz, about re-making worker-employer relations from Pearl Harbor to the Reagan era, focusing on the National War Labor Board, its distinguished members and its legacy for US labor-management relations and conflict resolution more broadly. Professor Carrie Menkel-Meadow will discuss the War Labor Board from the perspective of the legal fields of negotiations and conflict resolution.

- [Ronald W. Schatz](#), Professor of History, Wesleyan University
- [Thomas A. Kochan](#), George M. Bunker Professor, MIT Sloan School of Management
- [Carrie Menkel-Meadow](#), Distinguished Professor of Law (and Political Science), University of California Irvine Law School



Pricing

There is no charge, but we do ask that you register. We request that registered participants not share, forward, or post the webinar links and passwords to ensure the security of this webinar session. The Zoom link for the webinar will be sent to registered persons upon registration and also on the morning of the webinar.

Registration

At the registration site, you will be asked to input your name, email, affiliation (university/organization/company), and optionally your job title and other information. You will then receive a confirmation email that will include a unique link and additional information to join the meeting.



This email was sent to (b) (6) by
LERAoffice@illinois.edu

Labor and Employment Relations Association • 504 East Armory,
121 LER Building, Champaign, Illinois 61820, United States

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From: [Craig Becker](#)
To: [Josh Eidelson](#)
Cc: [McFerran, Lauren](#); [Marshall Babson](#); [wilma liebman](#); [Tiemann, Bernadette L](#); [Smith, Emily Elizabeth](#); [Blado, Kayla](#)
Subject: Re: See you tomorrow!Re:Per our conversations, here's a summary of our July 13 panel
Date: Monday, July 12, 2021 6:58:25 PM

I will do my best to be on early but we have an Exec Committee meeting tomorrow 10-12 so may not be possible. Craig

Craig Becker
General Counsel
AFL-CIO
815 16th St., N.W.
Washington, D.C. 20006
[\(202\)637-5310](tel:(202)637-5310)

On Mon, Jul 12, 2021 at 6:36 PM Josh Eidelson (BLOOMBERG/ NEWSROOM:)

<jeidelson@bloomberg.net> wrote:

Thank you! Good idea!

Sent from Bloomberg Professional for iPhone

----- Original Message -----

From: Wilma Liebman (b) (6) >
To: JOSH EIDELSON, Cbecker@afcio.org, mbabson@seyfarth.com, lauren.mcferran@nrlb.gov
CC: kayla.blado@nrlb.gov, eesmith@illinois.edu, btiemann@illinois.edu
At: 07/12/21 12:44:30 UTC-07:00

Thanks, Josh, and hi, all! I think it would make sense for all of us to check in about ten minutes early just to make sure everyone is connected. I'm in New York with only an iPad and so am not absolutely certain I'll be able to tune in. But I'm going to try. Thanks to each of you for doing this.

Sent from my iPad

On Jul 12, 2021, at 1:34 PM, Josh Eidelson (BLOOMBERG/ NEWSROOM:)

<jeidelson@bloomberg.net> wrote:

From: Josh Eidelson (BLOOMBERG/ NEWSROOM:) At: 07/08/21 09:28:28 UTC-7:00
To: cbecker@afcio.org, kayla.blado@nrlb.gov, (b) (6), mbabson@seyfarth.com
Subject: Per our conversations, here's a summary of our July 13 panel

Time: 12 PM ET, Tuesday July 13

Log-in: Register ahead of time here for the Zoom

link: (b) (6)

Format: Wilma Liebman will give a minute of introduction, followed by moderator Josh Eidelson who will give a minute of rundown of the panel's topic and a sentence of bio for each of the panelists. Then the rest of the hour-long session will consist of questions to the panelists, with answers limited to five minutes per person (this should allow us to get through 3 to 4 questions total). Panelists can briefly respond to each other if they wish, and feedback or questions from the audience could get incorporated.

Expected topics (order and which ones we actually get to are TBD):

- What will, and what should, the NLRB do in the Biden era? What will be the agency's priorities/approach under Chair McFerran? What approach will/should the coming Democratic majority take to determining who and what is protected by Section VII?
- What will be the long-term legacy of the Trump board? Will many of their precedents stay with us for long? Will their regulations stay on the books? Will they usher in a new era of lots of rule-making by both parties' members (and what are the pros and cons)? Will we see more of the sort of ethical controversies that erupted over recusal?
- Given the decline of collective bargaining, the limited remedies the Board has for enforcing the law, and the spread of arrangements like sub-contracting, franchising, and independent contracting, how relevant is the NLRB today?
- Is the back-and-forth pendulum swinging on the same precedents each time there's a new president going to be with us forever? Are there new issues the board will get to/ need to break ground on in the years ahead?
- What implications does the Cedar Point SCOTUS case have for the NLRB?

From: [McFerran, Lauren](#)
To: [Craig Becker](#); [Wilma Liebman](#)
Cc: [Josh Eidelson](#); (b) (6)
Subject: RE: Bravo!
Date: Tuesday, July 13, 2021 1:57:00 PM

It was a pleasure, as always. Glad you were able to listen in!

From: Craig Becker <cbecker@aficio.org>
Sent: Tuesday, July 13, 2021 1:32 PM
To: Wilma Liebman <(b) (6)>
Cc: Josh Eidelson <jeidelson@bloomberg.net>; mbbabson@gmail.com; McFerran, Lauren <Lauren.McFerran@nlrb.gov>
Subject: Re: Bravo!

Thanks for inviting me. Always nice to talk with that trio. Craig

Craig Becker
General Counsel
AFL-CIO
815 16th St., N.W.
Washington, D.C. 20006
[\(202\)637-5310](tel:(202)637-5310)

On Tue, Jul 13, 2021 at 1:04 PM Wilma Liebman <(b) (6)> wrote:

Sorry this time adding in Lauren!

Sent from my iPad

> On Jul 13, 2021, at 1:03 PM, Wilma Liebman <(b) (6)> wrote:

>

> Three points.... Was able to listen and so sorry I couldn't also watch and introduce josh! Really well done and substantive discussion. Refreshing.....

>

> Thank you again for doing this! Hope you'll tune in to next week's discussion of the war labor board. July 22 at noon.

>

>

> Sent from my iPad

Many thanks for inviting me to participate. Wilma. It was an honor and a pleasure to join Lauren and Craig in our discussion today. And Josh did his usual outstanding job moderating. Best to all.

Marsha B. Babson | Counsel | Seyfarth Shaw LLP
620 Eighth Avenue | New York, New York 10018-1 05
Direct 1-212-218-5559 | Fax 1-917-3 1-1283
mbabson@seyfarth.com | <https://gcc02.safelinks.protecturl=http%3A%2F%2Fwww.seyfarth.com%2F&camp>

> On Jul 13 2021 at 1 0 PM Wima Liechman (b) (6) > wrote:
>
> > So ry this tmc adding in Lauren!
>
> > Sent from my iPad
>
> > On Jul 13 2021 at 1 03 PM Wima Liechman (b) (6) > wro
>
> > Three po sts ... Was able to l sten and so sorry i couldn't also watch and introd
>
> > Thank you again for doing this! Hope you' t tune in o next week's discussio
>
> > >
> > > Sent from my iPad

From: [Monica Guizar](#)
To: [Kwon, Christy](#)
Cc: [McFerran, Lauren](#); [maria.anastas@ogletree.com](#); (b) (6)
Subject: Re: NLRB Updates Under the Biden Administration -- Slides and Order of Presentation
Date: Wednesday, July 14, 2021 5:00:19 PM
Attachments: [image001.png](#)

Thank you!

Monica Guizar
Associate General Counsel
Service Employees International Union (SEIU)
3055 Wilshire Blvd, Suite 1050
Los Angeles, CA 90010
Cell Phone: (213) 393-4303
Fax: (213) 381-7348

On Wed, Jul 14, 2021 at 4:55 PM Kwon, Christy <Christy.Kwon@nlrb.gov> wrote:

Dear Speakers: Please sign in at 10:15am (with your individualized Zoom link below) so that we can troubleshoot any issues before our 10:30am start time. Below is my suggested format where the speaker responsible for the slides presents on it first, and then the other speakers will provide whatever commentary or views they may have on that subject.

Slide 1 – Christy, brief intro (1 minute)

Slide 2 – Lauren, State of the Board (10 minutes)

Slide 5 – 11 – Monica on PCA; Lauren about her views on Alstate and Quicken, Maria on her views if any (20 min)

Slide 12-15 – Monica on PCA inherently concerted doctrine; Maria/Lauren on their respective views if any (10 minutes)

Slides 16-22 – Maria, work rules/8a1; after each slide asks Monica/Lauren on their respective views if any (20 minutes)

Slides 23-34 – Monica on PRO ACT, then Maria on her view if any (Lauren may need to leave the panel at this point) (10 minutes)

Slides 35-36 – Christy will announce any Questions from participants (5 minutes)

Please call or email me with any questions tonight or tomorrow morning.

Thank you!

Christy

-----Original Appointment-----

From: (b) (6) (b) (6) <[\(b\) \(6\)@calawyers.org](mailto:(b) (6)@calawyers.org)>
Sent: Wednesday, July 14, 2021 11:48 AM
To: (b) (6) <Lauren.McFerran@nlrb.gov>; maria.anastas@ogletree.com; monica.guizar@seiu.org; Christy.Kwon@nlrb.gov
Subject: NLRB Updates Under the Biden Administration
When: Thursday, July 15, 2021 10:15 AM-11:45 AM (UTC-08:00) Pacific Time (US & Canada).
Where: Zoom
Importance: High

Hello Speakers,

Thank you for joining our *36th Annual Meeting of the Labor and Employment Law Section*. Here are your presentation details:

Date:	July 15, 2021
Start Time:	10:30 am (You may sign in any time after 10:15 am)
End Time:	11:45 am
Panel Title:	NLRB Updates Under the Biden Administration
Panel Monitor:	(b) (6) (b) (6) < (b) (6)@calawyers.org >

Please feel free to join your panel up to 15 mins. before the start of your LIVE panel. A Virtual Presenter Checklist is attached for your reference.

Here are your individual Zoom Links for your presentation. Please use your personal link only.

Lauren McFerran

Please click this URL to join. (b) (6)

Note: This link should not be shared with others; it is unique to you.

Passcode: (b) (6)

Maria Anastas

Please click this URL to join. (b) (6)

Note: This link should not be shared with others; it is unique to you.

Passcode: (b) (6)

Monica Guizar

Please click this URL to join. (b) (6)

Note: This link should not be shared with others; it is unique to you.

Passcode: (b) (6)

Christy Kwon

Please click this URL to join. (b) (6)

Note: This link should not be shared with others; it is unique to you.

Passcode: (b) (6)

If you have any questions before your panel, please feel free to contact me or your panel monitor.

Thanks,

(b) (6)

(b) (6) | (b) (6)

California Lawyers Association

400 Capitol Mall, Suite 650 | Sacramento, CA 95814

O: (b) (6) | C: (b) (6) | (b) (6) @calawyers.org



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NLRB UNDER THE BIDEN ADMINISTRATION

July 15, 2021, 10:30am-11:45am (PST)

SPEAKERS:

Lauren McFerran - Chairman of the National Labor Relations Board

Monica Guizar –Service Employees International Union, Associate General Counsel

Maria Anastas – Ogletree Deakins, Shareholder

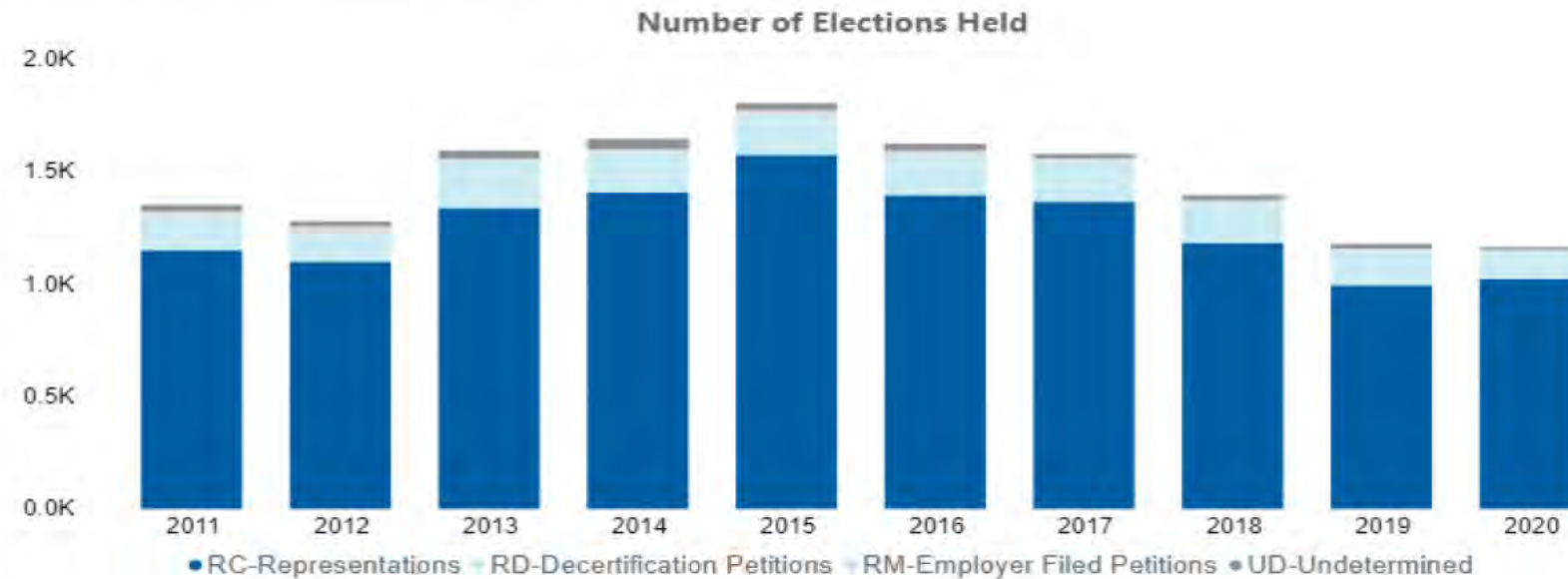
MODERATOR:

Christy Kwon – NLRB, Region 32 (Oakland), Regional Attorney

STATE OF THE BOARD

- R-Case & C-Case Rulemaking
- Zoom Hearings – R cases (Elections) and C cases (Unfair labor practices)
- Mail v. Manual Elections, *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9 2020)
- Outreach
- Spanish language website

Number of Elections Held Per FY



Fiscal Year	RC-Representations	RD-Decertification Petitions	RM-Employer Filed Petitions	UD-Undetermined	Total
2020	1022	118	14	11	1165
2019	995	154	9	21	1179
2018	1182	174	17	22	1395
2017	1366	168	26	19	1579
2016	1396	174	24	30	1624
2015	1574	178	22	30	1804
2014	1407	178	15	46	1646
2013	1339	206	12	37	1594
2012	1100	120	37	22	1279
2011	1150	150	25	28	1353

SPANISH LANGUAGE NLRB WEBSITE

Front Page | National Labor Relations Board | nlr.gov/es

The NLRB public website may experience intermittent outages during maintenance activities on Tuesday, June 29th, 2021 from 8:00 PM EDT to 10:00 PM EDT. We apologize for the inconvenience.

 **Junta Nacional de Relaciones del Trabajo**

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Introducción a la NLRB

La Junta Nacional de Relaciones del Trabajo es una agencia federal independiente que protege los derechos de los empleados en el sector privado para juntarse entre ellos, con o sin un sindicato, para mejorar sus salarios y condiciones de trabajo.

[Leer más al respecto \(en inglés\)](#)



 **Introducción a la NLRB**  **¿Cuáles son mis derechos?**  **Protección de los empleados**

El Portal de mi Cuenta de la Junta Nacional de Relaciones del Trabajo (NLRB, por sus siglas en inglés) es una página web de la NLRB que les permite a los individuos echar un vistazo a casos y consultas de las cuales son parte, así como presentar documentos electrónicamente (e-file) en aquellos casos/consultas, ver su propia historia de documentos presentados vía e-file y de administrar su perfil de usuario.

[Portal de mi Cuenta](#)

GC Memo 21-03

Mutual Aid & Protection and Inherently Concerted Activities

- Issued March 31, 2021 by Acting General Counsel Peter Ohr
- Due to the COVID pandemic, health and safety issues have become more prevalent in the workplace.
- Focuses on protecting employees' fundamental rights to self-organize at the workplace and robust enforcement of these rights.
- Includes protection of concerted political speech and activities if it has a nexus to employees interests as employees



Section 7 Guaranteed Rights

Fundamental right that employees have to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Protected concerted activity can occur outside of the context of union activity, such as instances where employees raise safety concerns to their employer or seek government protection. Constraints and limitations placed on employees engage in concerted activities and adverse actions taken against them in response to protected activity serve to effectively undermine the policy of the United States.

Mutual Aid or Protection Doctrine

In addition to union activity, labor organizing, and employee advocacy relating to wages, hours, and working conditions, the memo explains that Section 7 rights may also extend to:

“employees’ political and social justice advocacy when the subject matter has a direct nexus to employees’ interests as employees.”

Mutual Aid or Protection Doctrine

Eg's:

- A hotel employee's interview with a journalist about how earning the minimum wage affected her and employees like her, and how legislation to increase the minimum wage would affect them
- A “solo” strike by a pizza-shop employee to attend a convention and demonstration where she & other advocated for a \$15-per-hour minimum, and
- Protests in response to a sudden crackdown on undocumented immigrants & the possible revivla of workplace immigration raids

Mutual Aid or Protection Doctrine

- GC will robustly enforcement of Section 7 rights even though the recent decision by the current Board that have restricted those protections
- Two decisions by the current Board majority narrowed the circumstances during which employees are deemed to have acted for mutual aid and protection.
 - *Alstate Maintenance*
 - *Quicken Loans*

Alstate Maintenance, 367 NLRB No. 68 (2019)

Board majority found that an airport skycap's comments to his supervisor that he and other skycaps did not want to assist with soccer team's equipment because "[w]e did a similar job a year prior and did not receive a tip for it," was not for mutual aid and protection even though the bulk of skycaps' compensation came from customer tips.

Majority reasoned that tips were within customers' sole discretion, "a matter from which" their "employer is essentially detached," and that the comment was not aimed at improving skycaps' lot as employees [such as through recourse to administrative, legislative, or judicial forms.

The majority observed that the skycaps' comments about customer tips would be for mutual aid and protection if they were aimed at changing employer policies or practices.

***Quicken Loans*, 367 NLRB No. 112 (2019)**

Board majority found that an employee's comments to a coworker about having to handle a customer call that was a "waste of time" was not for the purpose of mutual aid or protection because there was no evidence that the conversation concerned improving working conditions.

No evidence that the customer referral was based on an employer policy or practice, that the two employees or any other employee had experienced or anticipated similar referrals, or that such referrals adversely affected their terms and conditions of employment.

Mutual Aid and Protection

GC Memo states that while the Board majorities failed to find that the employees' actions in *Alstate* and *Quicken Loans* were in furtherance of their mutual aid or protection, they identified a number of factors which, if present, would have favored a finding of protection. Going forward, cases involving retaliation against concerted employee conduct will be vigorously pursued, where these and other factors exist to tie workers' protests to their interests as employees.

Inherently Concerted Doctrine

The Board has long described concerted activity “in terms of interaction among employees.” Conduct generally becomes concerted when it is “engaged in with or on the authority of other employees,” or when an employee seeks either “to initiate or to induce or to prepare for group action.”

The touchstone of concert revolves around employees’ intention to band together to improve their wages or working conditions.

Employees may act in concert when discussing shared concerns about terms & conditions of employment, even when the discussion “in its inception involves only a speaker and a listener, for such activity is an indispensable preliminary step to employee self-organization.

Inherently Concerted Doctrine

The NLRB has also narrowed the circumstances under which individual worker complaints are considered concerted activity, often relying on the presence of group action or contemplation of group action to trigger the Act's protections.

Pursuant to the inherently concerted doctrine the Board has held that employee discussions are inherently concerted when they involve "certain vital categories of workplace life," even if the purpose of the discussion is not to induce group action.

Inherently Concerted Doctrine: Vital Categories of Workplace Life

“Vital categories of workplace life” include bread-and-butter issues- like wages, work schedules, and job security - by the Division of Advice has concluded that discussions about workplace health & safety and racial discrimination may also be inherently concerted.

GC Memo states that Ohr “will be considering these and other appropriate applications of the inherently concerted doctrine in suitable cases.”

WORKPLACE RULES AND POLICIES

UNDER SECTION 8(A)(1) OF THE NLRA

- **EMAIL**
- **DRESS CODE**
- **QUESTIONING EMPLOYEES**
- **CONFIDENTIALITY**
- **TWEETS**

**EMPLOYEE
HANDBOOK**

Access to Email and Other IT

Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino, 368 NLRB No. 143 (2019)

The NLRB overruled *Purple Communications* (2014) by holding employees do not have a statutory right under the NLRA to use their employer's email system or other information technology (IT) resources for Section 7 purposes, such as union organizing.

In *Purple*, the Board decided employees who have been given access to their employer's email system have a right to use that system during nonworking time for purposes protected by Section 7 of the NLRA, and therefore, that a policy prohibiting all non-work-related use of company email was unlawfully overbroad.

Union Insignia

Wal-Mart Stores, Inc., 368 NLRB No. 146 (Dec. 16, 2019)

The NLRB addressed whether a dress code policy that limits, but does not prohibit, the wearing of buttons and insignia violated the NLRA. Wal-Mart maintained a policy that limited employees to wearing “small, non-distracting” union insignia no larger than the size of their name badges.

Applying the analysis for “facially neutral” workplace policies established in its 2017 *Boeing* decision, which requires the Board to weigh the nature and extent of the potential impact on union rights against the employer’s legitimate justifications, the NLRB held that Wal-Mart’s policy limiting employees to wearing “small, non-distracting” union insignia while interacting with clients and customers did not violate the NLRA.

Employer Investigations: Will the Legal Standard Change?

On March 1, 2021, the NLRB voted 3-1 to solicit a public briefing on whether it should overrule the *Johnnie's Poultry Co.*, 146 NLRB 770 (1964) safeguards employees must receive if they are questioned by employers about their own or another employees' potentially protected concerted activity.

In *Sunbelt Rentals, Inc. and Int'l Union of Operating Engineers Local 139, AFL-CIO*, No. 18-CA-236643 (May 13, 2020), the ALJ found the employer violated Section 8(a)(1) of the Act when its attorney interrogated employees in connection with their testimony in the case.

The ALJ found the attorney failed to 1) inform one employee that his testimony would not affect his employment and 2) inform the other employee that his participation was voluntary. The employer asked the Board to not apply *Johnnie's Poultry*, but instead apply a "totality of the circumstances" standard.

Confidentiality in Workplace Investigations

Apogee Retail LLC d/b/a Unique Thrift Store and Kathy Johnson, 368 NLRB No. 144 (2019)

The NLRB decided employers do not violate the Act when they create facially neutral policies requiring employees to maintain confidentiality during open workplace investigations.

The 3-1 decision arose after a thrift store retailer prohibited its employees from discussing investigations in its Code of Business Conduct and Ethics and in its Loss Prevention Policy.

Note: The NLRB had previously concluded that employers could not require employees to keep investigations confidential unless they could show a legitimate and substantial business justification that outweighed its employees' rights to discuss working conditions. [*Banner Estrella*]

Employees Can Be Required to Maintain the Confidentiality of Arbitration Proceedings

Dish Network, LLC, 370 NLRB No. 97 (March 18, 2021)

Ruling probably short-lived

The NLRB decided the arbitration-confidentiality requirement ***did not violate the Act*** to the extent that it required confidentiality of arbitration *proceedings*, including hearings, discovery, and awards, explaining that the confidentiality provision “sets forth rules under which arbitration will be conducted.”

Relying on Supreme Court precedent interpreting the Federal Arbitration Act (“FAA”), the NLRB reiterated that the “FAA requires that courts rigorously enforce arbitration agreements according to their terms, including terms that specify...the rules under which...arbitration will be conducted.”

Watch Your Tweets!

FDRLST Media, LLC, 370 NLRB No. 49 (2020)

The NLRB reaffirmed its longstanding principle that a violation of Section 8(a)(1) does not depend on the employer's motive or tone.

An executive's tweet threatening employees that if anyone "tries to unionize I swear I'll send you back to the salt mine" violated the NLRA because a reasonable employee could view it as expressing an intent to take adverse action against employees who attempted to organize a union.

NOTE: The Charging Party was not an employee of the employer but they still had standing to file the Charge.

Protecting the Right to Organize (PRO) Act

- H.R. 842, S. 420: the most ambitious labor law reform legislative proposal by Congressional Democrats
- Expands core labor rights, makes remedies meaningful, and undoes decades of anti-labor court decisions
- House Representative passed the bill on February 6, 2020 and again on March 9, 2021. Senate Majority Leader Schumer has committed to schedule a Senate vote on the bill if proponents convince fifty Senators to cosponsor it.



PRO Act Core Provisions

- Strengthens Workers' Right to Strike and Act Collectively
- Reforms the NLRB Union Election Process
- First Contract Arbitration and the End of Impasse Implementation
- Strengthens Remedies, Penalties, and Enforcement Procedures
- Expands NLRA Coverage
- The End of Private-Sector “Right to Work”

Strengthening Workers' Right to Strike and Act Collectively

- Bans permanent replacement of strikers
- Expands the scope of strikes for which workers may not be disciplined or replaced to include any concerted stoppage of work, slowdown, or interruption of operations.
- Clarifies that “intermittent strikes” are protected, undoing a series of NLRB rules that denied the NLRA’s protection to workers who struck to frequently or intermittently.

Strengthening Workers' Right to Strike and Act Collectively

- Repeals bans on secondary strikes, secondary boycotts or picketing, recognitional picketing, and “hot cargo” agreements.
- Prohibits employers from locking out workers
- Requires employers to post notices in the workplace informing workers of their NLRA rights
- Prohibits agreements that waive workers' right to class action lawsuits

Reforming the NLRB Union Election Process

- Removes employer standing to participate in union election cases.
- Provides that when employers violate the NLRA or otherwise interfere in the election process, workers may win union representation without an NLRB election by obtaining authorization cards from a majority of workers.
- Prohibits mandatory/required “captive audience meetings”
- Requires employer disclosure of agreements with union election consultants

Reforming the NLRB Union Election Process (cont'd)

- Codifies the timelines in the Obama-era election rules
- INstructs the NLRB to approve the scope of union-proposed bargaining units unless employees outside the unit share an overwhelming community of interest with workers inside the proposed unit
- Allows for mail and electronic voting
- Codifies the NLRB's contract bar, recognition bar, and blocking charge doctrines

First Contract Arbitration and the End of Impasse Implementation

- Requires employers to meet and bargain with newly certified or recognized union representatives within 10 days of the union's request to bargain.
- If no agreement is reached after 90 days of bargaining, the union or employer may notify the FMCS and the FMCS would attempt to encourage the parties to reach agreement.
- If no agreement is reached w/in 30 days, FMCS would refer the dispute to a tripartite arbitration panel consisting of a labor member, employer member, and a neutral. The panel must issue a decision within 120 days that is binding for 2 years unless amended by the parties.

First Contract Arbitration and the End of Impasse Implementation (cont'd)

- The panel decision must be based on the employer's financial status and prospects, the employer's size and type, the employees' cost of living, the employees' ability to sustain themselves, their families, and their dependents on their compensation, and the compensation paid by other employers in the same business.
- Removes the right of employer to implement new terms and conditions after impasse and requires employers to continue to bargain even after impasse, to maintain existing terms and conditions unless a new agreement is reached or the union is decertified.
- Prohibits employers from withdrawing recognition absent a decertification election.

Strengthens Remedies, Penalties, and Enforcement Procedures

- Triple damages for employer violations equal to three times the combined amount of backpay, front pay and consequential damages
- Allows workers to file private action in federal court and recover triple damages, punitive damages and attorneys' fees
- Permits workers to obtain any remedy regardless of immigration status
- Imposition of penalties on corporate directors or officers personally when they commit a violation, establish a policy that leads to a violation, or should have prevented a violation
- Imposition of civil penalties on employers of up to \$50,000 per violation and up to \$100,000 for repeat violations that cause serious economic harm to employees

Strengthens Remedies, Penalties, and Enforcement Procedures (cont'd)

- Makes NLRB decisions self-enforcing without forcing workers or unions to wait for an enforcement order from an appeals court
- Empowers the NLRB to obtain temporary court orders against serious NLRA violations under a deferential standard

Expands NLRA Coverage

- Codifies the Obama NLRB's *Browning-Ferris* joint employer standard
- Implements the “ABC” test for determining independent contractor status under the NLRA. Workers are not independent contractors unless (A) they are free from control and direction in connection with the performance of work, (B) the work is performed outside the employer's usual course of business, and © the worker is customarily engaged in an independently established trade, occupation, profession, or business of the same nature of the work performed
- Narrows the NLRA's exclusion of “supervisors” to individuals who spend most of their worktime supervising others and by removing consideration mere assigning or directing of work


The End of Private-Sector “Right to Work”

- Overrides all state “right to work” laws
- Would permit private-sector union contracts to condition employment of nonmembers on their payment of fair share fees to the union for chargeable expenses including contract negotiation and representation
- Would still be unlawful for employers and unions to condition employment on full union membership

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Introduction to the NLRB

The National Labor Relations Board is an independent federal agency that protects the rights of private sector employees to join together, with or without a union, to improve their wages and working conditions.

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About Us

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[NLRB Process](#)
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[Board Rulemaking](#)

Board Decisions

Ed's Beans, Inc. d/b/a Crazy Mocha ...
Citation Number: 370 NLRB No. 140
Case Number: 06-CA-265396
Issuance Date: 22 June 2021

D.O. Productions, LLC
Citation Number: 370 NLRB No. 139
Case Number: 22-RM-270677
Issuance Date: 17 June 2021

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From: [Thomas A. Lenz](#)
To: "Monica Guizar"; [Kwon, Christy](#)
Cc: [McFerran, Lauren](#); [Anastas, Maria](#); [Krafts, Andrew J.](#); [Anastas, Maria](#); [Meyers, Mary](#); (b) (6)
Subject: RE: [AALRR-Cerritos.000302.51024] [EXTERNAL] Re: [Powerpoint Slides - for your review] - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am
Date: Thursday, July 15, 2021 2:56:19 PM

All: Thank you for an informative presentation today.

Chairman McFerran, I'll be looking forward to your presentation for SoCal LERA on July 29 — I'm on that planning committee too.

Best,

Tom

Thomas A. Lenz | Partner
Atkinson, Andelson, Loya, Ruud & Romo
201 South Lake Avenue, Suite 300, Pasadena, California 91101
Main (626) 583-8600 • Fax (626) 583-8610
tlenz@aallrr.com | [vcard](#) | [bio](#) | [website](#) | [subscribe](#)

From: Monica Guizar [mailto:monica.guizar@seiu.org]
Sent: Wednesday, July 14, 2021 9:48 AM
To: Kwon, Christy
Cc: McFerran, Lauren; Anastas, Maria; Krafts, Andrew J.; Anastas, Maria; Thomas A. Lenz; Meyers, Mary; (b) (6)
Subject: [EXTERNAL] Re: [Powerpoint Slides - for your review] - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am

[EXTERNAL MESSAGE]

Thank you, Christy!!!

Monica Guizar
Associate General Counsel
Service Employees International Union (SEIU)
3055 Wilshire Blvd., Suite 1050
Los Angeles, CA 90010
Cell Phone: (213) 393-4303
Fax: (213) 381-7348

On Wed, Jul 14, 2021 at 12:46 PM Kwon, Christy <Christy.Kwon@nlrb.gov> wrote:

Good morning, Monica, and all. I touched based with (b) (6) from CLA and they do not have the links for us yet. I'm sure the links will go out before tomorrow morning.

Let's plan on meeting 30 minutes in advance tomorrow to work out any kinks (that is 10am pst/1pm est).

In terms of the format of the panel, let's follow the slide assignments. I will start with a very

short introduction and my main job will be to transition the panel discussion from one speaker to the next.

Please reach out with any questions or concerns.

Christy

From: Monica Guizar <monica.guizar@seiu.org>
Sent: Wednesday, July 14, 2021 7:41 AM
To: Kwon, Christy <Christy.Kwon@nlrb.gov>
Cc: McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Anastas, Maria <Maria.Anastas@ogletree.com>; Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>; Anastas, Maria <Maria.Anastas@ogletreedeakins.com>; Thomas A. Lenz (TLenz@aalrr.com) <TLenz@aalrr.com>; Meyers, Mary <Mary.Meyers@nlrb.gov>; (b) (6) <[\(b\)\(6\)@calawyers.org](mailto:(b)(6)@calawyers.org)>
Subject: Re: [Powerpoint Slides - for your review] - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am

Good morning!

Thanks, Christy, for your work on putting our slides together. I am writing to confirm that the attached PPT is the final presentation for our panel tomorrow.

I look forward to seeing you all tomorrow via Zoom. Would you kindly share the Zoom link for us to log on tomorrow 30 minutes before our scheduled start time?

Thanks,

Monica

Monica Guizar
Associate General Counsel
Service Employees International Union (SEIU)
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Cell Phone: (213) 393-4303
Fax: (213) 381-7348

On Tue, Jun 29, 2021 at 9:16 PM Kwon, Christy <Christy.Kwon@nlrb.gov> wrote:

Greetings! I've consolidated the slides that you have sent me. If you'd like to make any changes to the slides, please let me know and I'll be happy to update. I'll be submitting the final version to CLA by the end of the day tomorrow, June 30.

Best,
Christy

From: Kwon, Christy
Sent: Wednesday, June 9, 2021 2:03 PM
To: 'Monica Guizar' <monica.guizar@seiu.org>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>; 'Anastas, Maria' <Maria.Anastas@ogletree.com>; Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>; 'Anastas, Maria' <Maria.Anastas@ogletreedeakins.com>
Cc: 'Thomas A. Lenz' (TLenz@aalrr.com) <TLenz@aalrr.com>; Meyers, Mary

<Mary.Meyers@nlrb.gov>; (b) (6) <(b) (6)@calawyers.org>

Subject: RE: [Panel description] RE: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am

Hi All, just a friendly reminder to send me your materials by June 15 so that I can put it together in a powerpoint. If you need any help or have concerns, please let me know. I'm copying for everyone the outline which is also at the end of this email chain.

I. State of the Board – **McFerran** (10 min overview)

- a. R-Case & C-Case Rulemaking (McFerran intro)
- b. Zoom hearings – r and c cases (min) (McFerran)
- c. Mail v. manual elections, Aspirus Keweenaw (McFerran)
- d. Outreach (McFerran) (part of intro)
- e. Spanish language website
- f.

II. Union and PCA Discrimination/Termination Cases (20 min total)(**Monica**)

- a. Reemphasis on PCA by GC, especially regarding health and safety and COVID-19
- b. Discussion of some recent cases
- c.

I

III. Work Rules (30 min total) – (**Maria**)

- a. Caesar's – email
- b. Union Insignia – Walmart
- c. Access?
- d. Tweets can violate 8a1
- e. Johnnie's Poultry – changes to standard? (comments solicited)
- f. Investigations – confidentiality issues
- g. Arbitration Agreements – confidentiality provisions
- h.

IV. Pro Act (**Monica**)(10 minutes)

V. Q&A & Misc (5 minutes)

From: Kwon, Christy

Sent: Friday, April 16, 2021 1:18 PM

To: 'Monica Guizar' <monica.guizar@seiu.org>; McFerran, Lauren

<Lauren.McFerran@nlrb.gov>; 'Anastas, Maria' <Maria.Anastas@ogletree.com>; Krafts,

Andrew J. <Andrew.Krafts@nlrb.gov>; 'Anastas, Maria'

<Maria.Anastas@ogletreedeakins.com>

Cc: 'Thomas A. Lenz' (<TLenz@aalrr.com>) <TLenz@aalrr.com>; Meyers, Mary
<Mary.Meyers@nlrb.gov>; (b) (6) <(b) (6) @calawyers.org>

Subject: RE: [Panel description] RE: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am

Hi everyone, based on feedback from Chairman McFerran regarding her limitations to speak on certain topics in her official capacity I have edited the description (see below). Also, we will not include any specific discussion about COVID related PCA, information requests, or bargaining, as those issues can come before her. A general discussion of PCA, as we planned, is fine. I think we can mention GC Memo 21-03 (attached) which is a public document. Thank you and I welcome any other comments!

NLRB Under The Biden Administration

The Chairman of the National Labor Relations Board under the Biden Administration, joined by experienced union-side and management side labor attorneys, will address the current state of the Board as it transitions from the Trump Board's policies on a wide range of topics including current outreach initiatives, status of rule-making and mail ballot elections, protected concerted activities, and workplace rules regarding email usage, union insignia, confidentiality, and investigations.

From: Kwon, Christy

Sent: Friday, April 16, 2021 10:34 AM

To: Monica Guizar <monica.guizar@seiu.org>; McFerran, Lauren
<Lauren.McFerran@nlrb.gov>; Anastas, Maria <Maria.Anastas@ogletree.com>; Krafts,
Andrew J. <Andrew.Krafts@nlrb.gov>; Anastas, Maria
<Maria.Anastas@ogletreedeakins.com>

Cc: Thomas A. Lenz (<TLenz@aalrr.com>) <TLenz@aalrr.com>; Meyers, Mary
<Mary.Meyers@nlrb.gov>; (b) (6) (b) (6) @calawyers.org>

Subject: [Panel description] RE: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am

Dear All, I need to submit a panel description to CLA. While drafting it, it occurred me to that we should touch on collective bargaining rights (especially information requests and bargaining) as it relates to COVID-19. I know that more unions are asking for information related to COVID infections and vaccinations as it attempts to bargain for safer working conditions. I believe this area will continue to evolve. **So, Monica**, I know you had offered to do a bit on 8(a)(5) bargaining like you did for the ABA, and I was hoping you could incorporate some of that. The issues I'm seeing are when one party or another insists on in-person negotiations, information requests involving COVID, unilateral changes and bargaining around health and safety especially in the essential businesses/industries that are public facing such as bus drivers, healthcare, and I presume hospitality will come more into play as we start opening up more. Also, there is a lot of PCA around these issues, as well as other "political issues" if you want to address that in the PCA section. I can also help develop these areas as well with you.

Also, if anyone has edits for the panel description below, please reply with edits today. I apologize for the short notice and thank you in advance for your edits/comments, if any. -

Christy

NLRB Under The Biden Administration

The Chairman of the National Labor Relations Board under the Biden Administration, along with two experienced union-side and management side labor attorneys, will address the current state of the Board as it transitions from the Trump Board's policies on a wide range of topics including the reestablishment of outreach to the public, status of rule-making and mail ballot elections, the Acting General Counsel's renewed emphasis on protecting concerted activities and collective bargaining as it relates to Covid-19 health and safety issues, and the lawfulness of certain workplace rules regarding email usage, wearing union insignia, confidentiality, and investigations.

From: Kwon, Christy

Sent: Monday, April 12, 2021 12:59 PM

To: Monica Guizar <monica.guizar@seiu.org>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Anastas, Maria <Maria.Anastas@ogletree.com>; Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>; Anastas, Maria <Maria.Anastas@ogletreedeakins.com>

Cc: Thomas A. Lenz (TLenz@aallr.com) <TLenz@aallr.com>; Meyers, Mary <Mary.Meyers@nlrb.gov>; (b) (6) <(b) (6)@calawyers.org>

Subject: RE: [Reminder] RE: Planning Meeting - NLRB Panel for CLA – Update Under New Administration, July 15, 2021, 10:30am-11:45am

Hello All -- Attached and below is the outline of responsibilities as we discussed. I've also attached two prior powerpoints so that you can see what we've done in the past. The deadline to get materials to me is **June 15, 2021**. I'd like to schedule a call right before the panel so that we can confirm the final format. Please let me know if **Monday, July 12, noon (PST)** does not work for you. If you have any questions, please contact me and Tom. Thank you! Christy and Tom

I. State of the Board – McFerran (10 min overview)

- a. R-Case & C-Case Rulemaking (McFerran intro)
- b. Zoom hearings – r and c cases (min) (McFerran)
- c. Mail v. manual elections, Aspirus Keweenaw (McFerran)
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- a. Reemphasis on PCA by GC, especially regarding health and safety and COVID-19
- b. Discussion of some recent cases
- c.

!

III. Work Rules (30 min total) – (Maria)

- a. Caesar's – email
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- c. Access?
- d. Tweets can violate 8a1
- e. Johnnie's Poultry – changes to standard? (comments solicited)
- f. Investigations – confidentiality issues
- g. Arbitration Agreements – confidentiality provisions
- h.

IV. Pro Act (Monica)(10 minutes)

V. Q&A & Misc (5 minutes)

LABOR AND
EMPLOYMENT
LAW



NLRB UNDER THE BIDEN ADMINISTRATION

July 15, 2021, 10:30am-11:45am (PST)

SPEAKERS:

Lauren McFerran - Chairman of the National Labor Relations Board

Monica Guizar –Service Employees International Union, Associate General Counsel

Maria Anastas – Ogletree Deakins, Shareholder

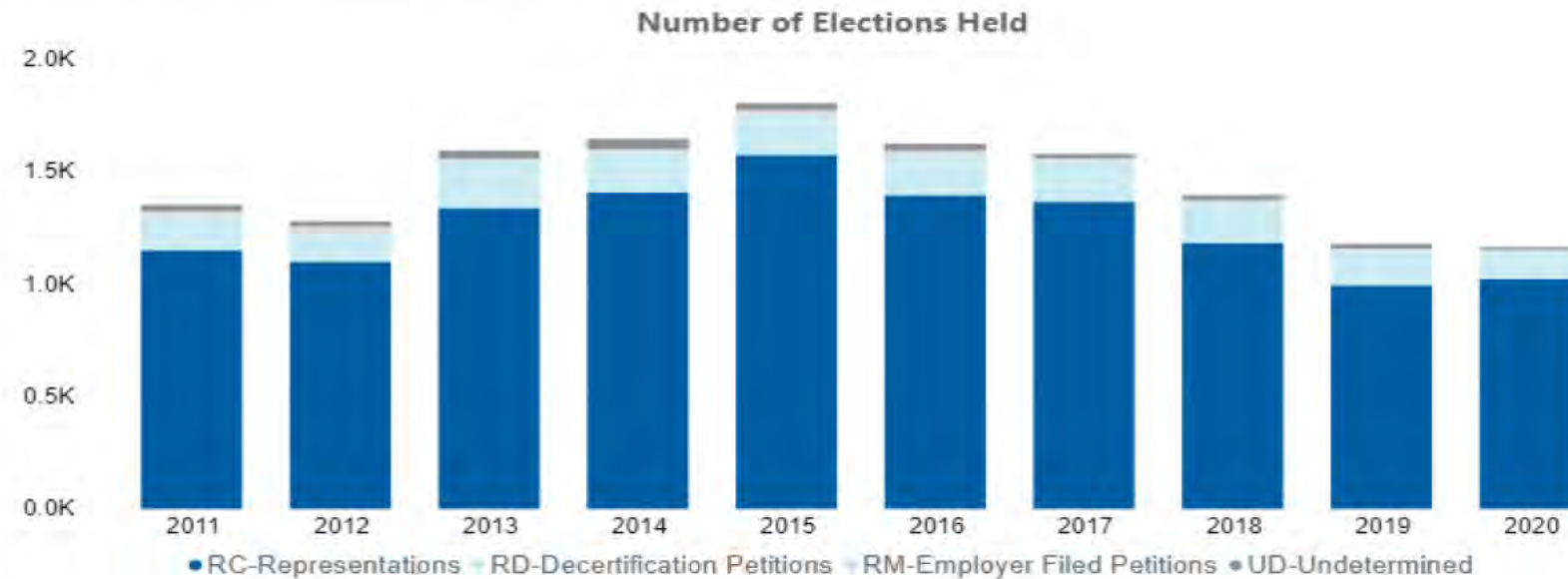
MODERATOR:

Christy Kwon – NLRB, Region 32 (Oakland), Regional Attorney

STATE OF THE BOARD

- R-Case & C-Case Rulemaking
- Zoom Hearings – R cases (Elections) and C cases (Unfair labor practices)
- Mail v. Manual Elections, *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9 2020)
- Outreach
- Spanish language website

Number of Elections Held Per FY



Fiscal Year	RC-Representations	RD-Decertification Petitions	RM-Employer Filed Petitions	UD-Undetermined	Total
2020	1022	118	14	11	1165
2019	995	154	9	21	1179
2018	1182	174	17	22	1395
2017	1366	168	26	19	1579
2016	1396	174	24	30	1624
2015	1574	178	22	30	1804
2014	1407	178	15	46	1646
2013	1339	206	12	37	1594
2012	1100	120	37	22	1279
2011	1150	150	25	28	1353

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Introducción a la NLRB

La Junta Nacional de Relaciones del Trabajo es una agencia federal independiente que protege los derechos de los empleados en el sector privado para juntarse entre ellos, con o sin un sindicato, para mejorar sus salarios y condiciones de trabajo.

[Leer más al respecto \(en inglés\)](#)



 **Introducción a la NLRB**  **¿Cuáles son mis derechos?**  **Protección de los empleados**

El Portal de mi Cuenta de la Junta Nacional de Relaciones del Trabajo (NLRB, por sus siglas en inglés) es una página web de la NLRB que les permite a los individuos echar un vistazo a casos y consultas de las cuales son parte, así como presentar documentos electrónicamente (e-file) en aquellos casos/consultas, ver su propia historia de documentos presentados vía e-file y de administrar su perfil de usuario.

[Portal de mi Cuenta](#)

GC Memo 21-03

Mutual Aid & Protection and Inherently Concerted Activities

- Issued March 31, 2021 by Acting General Counsel Peter Ohr
- Due to the COVID pandemic, health and safety issues have become more prevalent in the workplace.
- Focuses on protecting employees' fundamental rights to self-organize at the workplace and robust enforcement of these rights.
- Includes protection of concerted political speech and activities if it has a nexus to employees interests as employees



Section 7 Guaranteed Rights

Fundamental right that employees have to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Protected concerted activity can occur outside of the context of union activity, such as instances where employees raise safety concerns to their employer or seek government protection. Constraints and limitations placed on employees engage in concerted activities and adverse actions taken against them in response to protected activity serve to effectively undermine the policy of the United States.

Mutual Aid or Protection Doctrine

In addition to union activity, labor organizing, and employee advocacy relating to wages, hours, and working conditions, the memo explains that Section 7 rights may also extend to:

“employees’ political and social justice advocacy when the subject matter has a direct nexus to employees’ interests as employees.”

Mutual Aid or Protection Doctrine

Eg's:

- A hotel employee's interview with a journalist about how earning the minimum wage affected her and employees like her, and how legislation to increase the minimum wage would affect them
- A “solo” strike by a pizza-shop employee to attend a convention and demonstration where she & other advocated for a \$15-per-hour minimum, and
- Protests in response to a sudden crackdown on undocumented immigrants & the possible revivla of workplace immigration raids

Mutual Aid or Protection Doctrine

- GC will robustly enforcement of Section 7 rights even though the recent decision by the current Board that have restricted those protections
- Two decisions by the current Board majority narrowed the circumstances during which employees are deemed to have acted for mutual aid and protection.
 - *Alstate Maintenance*
 - *Quicken Loans*

Alstate Maintenance, 367 NLRB No. 68 (2019)

Board majority found that an airport skycap's comments to his supervisor that he and other skycaps did not want to assist with soccer team's equipment because "[w]e did a similar job a year prior and did not receive a tip for it," was not for mutual aid and protection even though the bulk of skycaps' compensation came from customer tips.

Majority reasoned that tips were within customers' sole discretion, "a matter from which" their "employer is essentially detached," and that the comment was not aimed at improving skycaps' lot as employees [such as through recourse to administrative, legislative, or judicial forms.

The majority observed that the skycaps' comments about customer tips would be for mutual aid and protection if they were aimed at changing employer policies or practices.

***Quicken Loans*, 367 NLRB No. 112 (2019)**

Board majority found that an employee's comments to a coworker about having to handle a customer call that was a "waste of time" was not for the purpose of mutual aid or protection because there was no evidence that the conversation concerned improving working conditions.

No evidence that the customer referral was based on an employer policy or practice, that the two employees or any other employee had experienced or anticipated similar referrals, or that such referrals adversely affected their terms and conditions of employment.

Mutual Aid and Protection

GC Memo states that while the Board majorities failed to find that the employees' actions in *Alstate* and *Quicken Loans* were in furtherance of their mutual aid or protection, they identified a number of factors which, if present, would have favored a finding of protection. Going forward, cases involving retaliation against concerted employee conduct will be vigorously pursued, where these and other factors exist to tie workers' protests to their interests as employees.

Inherently Concerted Doctrine

The Board has long described concerted activity “in terms of interaction among employees.” Conduct generally becomes concerted when it is “engaged in with or on the authority of other employees,” or when an employee seeks either “to initiate or to induce or to prepare for group action.”

The touchstone of concert revolves around employees’ intention to band together to improve their wages or working conditions.

Employees may act in concert when discussing shared concerns about terms & conditions of employment, even when the discussion “in its inception involves only a speaker and a listener, for such activity is an indispensable preliminary step to employee self-organization.

Inherently Concerted Doctrine

The NLRB has also narrowed the circumstances under which individual worker complaints are considered concerted activity, often relying on the presence of group action or contemplation of group action to trigger the Act's protections.

Pursuant to the inherently concerted doctrine the Board has held that employee discussions are inherently concerted when they involve "certain vital categories of workplace life," even if the purpose of the discussion is not to induce group action.

Inherently Concerted Doctrine: Vital Categories of Workplace Life

“Vital categories of workplace life” include bread-and-butter issues- like wages, work schedules, and job security - by the Division of Advice has concluded that discussions about workplace health & safety and racial discrimination may also be inherently concerted.

GC Memo states that Ohr “will be considering these and other appropriate applications of the inherently concerted doctrine in suitable cases.”

WORKPLACE RULES AND POLICIES

UNDER SECTION 8(A)(1) OF THE NLRA

- **EMAIL**
- **DRESS CODE**
- **QUESTIONING EMPLOYEES**
- **CONFIDENTIALITY**
- **TWEETS**

**EMPLOYEE
HANDBOOK**

Access to Email and Other IT

Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino, 368 NLRB No. 143 (2019)

The NLRB overruled *Purple Communications* (2014) by holding employees do not have a statutory right under the NLRA to use their employer's email system or other information technology (IT) resources for Section 7 purposes, such as union organizing.

In *Purple*, the Board decided employees who have been given access to their employer's email system have a right to use that system during nonworking time for purposes protected by Section 7 of the NLRA, and therefore, that a policy prohibiting all non-work-related use of company email was unlawfully overbroad.

Union Insignia

Wal-Mart Stores, Inc., 368 NLRB No. 146 (Dec. 16, 2019)

The NLRB addressed whether a dress code policy that limits, but does not prohibit, the wearing of buttons and insignia violated the NLRA. Wal-Mart maintained a policy that limited employees to wearing “small, non-distracting” union insignia no larger than the size of their name badges.

Applying the analysis for “facially neutral” workplace policies established in its 2017 *Boeing* decision, which requires the Board to weigh the nature and extent of the potential impact on union rights against the employer’s legitimate justifications, the NLRB held that Wal-Mart’s policy limiting employees to wearing “small, non-distracting” union insignia while interacting with clients and customers did not violate the NLRA.

Employer Investigations: Will the Legal Standard Change?

On March 1, 2021, the NLRB voted 3-1 to solicit a public briefing on whether it should overrule the *Johnnie's Poultry Co.*, 146 NLRB 770 (1964) safeguards employees must receive if they are questioned by employers about their own or another employees' potentially protected concerted activity.

In *Sunbelt Rentals, Inc. and Int'l Union of Operating Engineers Local 139, AFL-CIO*, No. 18-CA-236643 (May 13, 2020), the ALJ found the employer violated Section 8(a)(1) of the Act when its attorney interrogated employees in connection with their testimony in the case.

The ALJ found the attorney failed to 1) inform one employee that his testimony would not affect his employment and 2) inform the other employee that his participation was voluntary. The employer asked the Board to not apply *Johnnie's Poultry*, but instead apply a "totality of the circumstances" standard.

Confidentiality in Workplace Investigations

Apogee Retail LLC d/b/a Unique Thrift Store and Kathy Johnson, 368 NLRB No. 144 (2019)

The NLRB decided employers do not violate the Act when they create facially neutral policies requiring employees to maintain confidentiality during open workplace investigations.

The 3-1 decision arose after a thrift store retailer prohibited its employees from discussing investigations in its Code of Business Conduct and Ethics and in its Loss Prevention Policy.

Note: The NLRB had previously concluded that employers could not require employees to keep investigations confidential unless they could show a legitimate and substantial business justification that outweighed its employees' rights to discuss working conditions. [*Banner Estrella*]

Employees Can Be Required to Maintain the Confidentiality of Arbitration Proceedings

Dish Network, LLC, 370 NLRB No. 97 (March 18, 2021)

Ruling probably short-lived

The NLRB decided the arbitration-confidentiality requirement ***did not violate the Act*** to the extent that it required confidentiality of arbitration *proceedings*, including hearings, discovery, and awards, explaining that the confidentiality provision “sets forth rules under which arbitration will be conducted.”

Relying on Supreme Court precedent interpreting the Federal Arbitration Act (“FAA”), the NLRB reiterated that the “FAA requires that courts rigorously enforce arbitration agreements according to their terms, including terms that specify...the rules under which...arbitration will be conducted.”

QUESTION

Watch Your Tweets!

FDRLST Media, LLC, 370 NLRB No. 49 (2020)

The NLRB reaffirmed its longstanding principle that a violation of Section 8(a)(1) does not depend on the employer's motive or tone.

An executive's tweet threatening employees that if anyone "tries to unionize I swear I'll send you back to the salt mine" violated the NLRA because a reasonable employee could view it as expressing an intent to take adverse action against employees who attempted to organize a union.

NOTE: The Charging Party was not an employee of the employer but they still had standing to file the Charge.

Protecting the Right to Organize (PRO) Act

- H.R. 842, S. 420: the most ambitious labor law reform legislative proposal by Congressional Democrats
- Expands core labor rights, makes remedies meaningful, and undoes decades of anti-labor court decisions
- House Representative passed the bill on February 6, 2020 and again on March 9, 2021. Senate Majority Leader Schumer has committed to schedule a Senate vote on the bill if proponents convince fifty Senators to cosponsor it.



PRO Act Core Provisions

- Strengthens Workers' Right to Strike and Act Collectively
- Reforms the NLRB Union Election Process
- First Contract Arbitration and the End of Impasse Implementation
- Strengthens Remedies, Penalties, and Enforcement Procedures
- Expands NLRA Coverage
- The End of Private-Sector “Right to Work”

Strengthening Workers' Right to Strike and Act Collectively

- Bans permanent replacement of strikers
- Expands the scope of strikes for which workers may not be disciplined or replaced to include any concerted stoppage of work, slowdown, or interruption of operations.
- Clarifies that “intermittent strikes” are protected, undoing a series of NLRB rules that denied the NLRA’s protection to workers who struck to frequently or intermittently.

Strengthening Workers' Right to Strike and Act Collectively

- Repeals bans on secondary strikes, secondary boycotts or picketing, recognitional picketing, and “hot cargo” agreements.
- Prohibits employers from locking out workers
- Requires employers to post notices in the workplace informing workers of their NLRA rights
- Prohibits agreements that waive workers' right to class action lawsuits

Reforming the NLRB Union Election Process

- Removes employer standing to participate in union election cases.
- Provides that when employers violate the NLRA or otherwise interfere in the election process, workers may win union representation without an NLRB election by obtaining authorization cards from a majority of workers.
- Prohibits mandatory/required “captive audience meetings”
- Requires employer disclosure of agreements with union election consultants

Reforming the NLRB Union Election Process (cont'd)

- Codifies the timelines in the Obama-era election rules
- INstructs the NLRB to approve the scope of union-proposed bargaining units unless employees outside the unit share an overwhelming community of interest with workers inside the proposed unit
- Allows for mail and electronic voting
- Codifies the NLRB's contract bar, recognition bar, and blocking charge doctrines

First Contract Arbitration and the End of Impasse Implementation

- Requires employers to meet and bargain with newly certified or recognized union representatives within 10 days of the union's request to bargain.
- If no agreement is reached after 90 days of bargaining, the union or employer may notify the FMCS and the FMCS would attempt to encourage the parties to reach agreement.
- If no agreement is reached w/in 30 days, FMCS would refer the dispute to a tripartite arbitration panel consisting of a labor member, employer member, and a neutral. The panel must issue a decision within 120 days that is binding for 2 years unless amended by the parties.

First Contract Arbitration and the End of Impasse Implementation (cont'd)

- The panel decision must be based on the employer's financial status and prospects, the employer's size and type, the employees' cost of living, the employees' ability to sustain themselves, their families, and their dependents on their compensation, and the compensation paid by other employers in the same business.
- Removes the right of employer to implement new terms and conditions after impasse and requires employers to continue to bargain even after impasse, to maintain existing terms and conditions unless a new agreement is reached or the union is decertified.
- Prohibits employers from withdrawing recognition absent a decertification election.

Strengthens Remedies, Penalties, and Enforcement Procedures

- Triple damages for employer violations equal to three times the combined amount of backpay, front pay and consequential damages
- Allows workers to file private action in federal court and recover triple damages, punitive damages and attorneys' fees
- Permits workers to obtain any remedy regardless of immigration status
- Imposition of penalties on corporate directors or officers personally when they commit a violation, establish a policy that leads to a violation, or should have prevented a violation
- Imposition of civil penalties on employers of up to \$50,000 per violation and up to \$100,000 for repeat violations that cause serious economic harm to employees

Strengthens Remedies, Penalties, and Enforcement Procedures (cont'd)

- Makes NLRB decisions self-enforcing without forcing workers or unions to wait for an enforcement order from an appeals court
- Empowers the NLRB to obtain temporary court orders against serious NLRA violations under a deferential standard

Expands NLRA Coverage

- Codifies the Obama NLRB's *Browning-Ferris* joint employer standard
- Implements the “ABC” test for determining independent contractor status under the NLRA. Workers are not independent contractors unless (A) they are free from control and direction in connection with the performance of work, (B) the work is performed outside the employer's usual course of business, and © the worker is customarily engaged in an independently established trade, occupation, profession, or business of the same nature of the work performed
- Narrows the NLRA's exclusion of “supervisors” to individuals who spend most of their worktime supervising others and by removing consideration mere assigning or directing of work


The End of Private-Sector “Right to Work”

- Overrides all state “right to work” laws
- Would permit private-sector union contracts to condition employment of nonmembers on their payment of fair share fees to the union for chargeable expenses including contract negotiation and representation
- Would still be unlawful for employers and unions to condition employment on full union membership

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Introduction to the NLRB

The National Labor Relations Board is an independent federal agency that protects the rights of private sector employees to join together, with or without a union, to improve their wages and working conditions.

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The NLRB My Account Portal is an NLRB website that allows individuals to view cases and inquiries to which they are a party, e-file documents in those cases/inquiries, view their e-file history and manage their user profile.

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Board Decisions

Ed's Beans, Inc. d/b/a Crazy Mocha ...
Citation Number: 370 NLRB No. 140
Case Number: 06-CA-265396
Issuance Date: 22 June 2021

D.O. Productions, LLC
Citation Number: 370 NLRB No. 139
Case Number: 22-RM-270677
Issuance Date: 17 June 2021

Quick Decisions

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Volume# *

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79°F Sunny 12:48 PM 6/29/2021

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From: [McFerran, Lauren](#)
To: (b) (6); Kwon, Christy: maria.anastas@ogletree.com; monica.guizar@seiu.org
Subject: RE: NLRB Updates Under the Biden Administration -- Slides and Order of Presentation
Date: Thursday, July 15, 2021 5:22:00 PM
Attachments: [image001.png](#)

It was a pleasure working with everyone and I thought it was an excellent discussion. I appreciate the invitation to participate!

Best wishes,
Lauren

From: (b) (6) (b) (6) @calawyers.org>
Sent: Thursday, July 15, 2021 2:51 PM
To: Kwon, Christy <Christy.Kwon@nrlb.gov>; McFerran, Lauren <Lauren.McFerran@nrlb.gov>; maria.anastas@ogletree.com; monica.guizar@seiu.org
Subject: RE: NLRB Updates Under the Biden Administration -- Slides and Order of Presentation

Hello Everyone,

Thank you so much for speaking at our event!

I apologize for the loss of time as well. I missed my 5 minute warning and it looked like the time got away from me as well. But, your presentation was great! And, the recording will have your full send off!

Thanks,

(b) (6)

(b) (6) (b) (6)
California Lawyers Association
400 Capitol Mall, Suite 650 | Sacramento, CA 95814
O (b) (6) | C (b) (6) | (b) (6) @calawyers.org



From: Kwon, Christy <Christy.Kwon@nrlb.gov>
Sent: Thursday, July 15, 2021 11:49 AM
To: McFerran, Lauren <Lauren.McFerran@nrlb.gov>; maria.anastas@ogletree.com; monica.guizar@seiu.org
Cc: (b) (6) (b) (6) @calawyers.org>; (b) (6) (b) (6) @calawyers.org>
Subject: RE: NLRB Updates Under the Biden Administration -- Slides and Order of Presentation

Thank you for sharing your time and knowledge. I'm sorry I didn't keep time well toward the end. I missed the ten minute warning which I was going to use to move onto the Pro Act. Again, thank you for very much! I know your time is precious.

From: Kwon, Christy
Sent: Thursday, July 15, 2021 10:08 AM
To: McFerran, Lauren <Lauren.McFerran@nrlb.gov>; maria.anastas@ogletree.com; monica.guizar@seiu.org
Cc: (b) (6) (b) (6) @calawyers.org>; (b) (6) (b) (6) @calawyers.org>
Subject: RE: NLRB Updates Under the Biden Administration -- Slides and Order of Presentation

You can reach me at 202-702-2159 if there are any problems with logging on.

From: Kwon, Christy
Sent: Wednesday, July 14, 2021 1:55 PM
To: Lauren.McFerran@nrlb.gov; maria.anastas@ogletree.com; monica.guizar@seiu.org
Cc: (b) (6) (b) (6) @calawyers.org>; (b) (6) (b) (6) @calawyers.org>
Subject: RE: NLRB Updates Under the Biden Administration -- Slides and Order of Presentation

Dear Speakers: Please sign in at 10:15am (with your individualized Zoom link below) so that we can troubleshoot any issues before our 10:30am start time. Below is my suggested format where the speaker responsible for the slides presents on it first, and then the other speakers will provide whatever commentary or views they may have on that subject.

Slide 1 – Christy, brief intro (1 minute)
Slide 2 – Lauren, State of the Board (10 minutes)
Slide 5 – 11 – Monica on PCA; Lauren about her views on Alstate and Quicken, Maria on her views if any (20 min)
Slide 12-15 – Monica on PCA inherently concerted doctrine; Maria/Lauren on their respective views if any (10 minutes)
Slides 16-22 – Maria, work rules/8a1; after each slide asks Monica/Lauren on their respective views if any (20 minutes)
Slides 23-34 – Monica on PRO ACT, then Maria on her view if any (Lauren may need to leave the panel at this point) (10 minutes)
Slides 35-36 – Christy will announce any Questions from participants (5 minutes)

Please call or email me with any questions tonight or tomorrow morning.

Thank you!
Christy

-----Original Appointment-----

From: (b) (6) (b) (6) <[@calawyers.org](mailto:(b) (6)@calawyers.org)>
Sent: Wednesday, July 14, 2021 11:48 AM
To: (b) (6); Lauren.McFerran@nlrb.gov; maria.anastas@ogletree.com; monica.guizar@seiu.org; Christy.Kwon@nlrb.gov
Subject: NLRB Updates Under the Biden Administration
When: Thursday, July 15, 2021 10:15 AM-11:45 AM (UTC-08 00) Pacific Time (US & Canada).
Where: Zoom
Importance: High

Hello Speakers,

Thank you for joining our **36th Annual Meeting of the Labor and Employment Law Section**. Here are your presentation details:

Date: July 15, 2021
Start Time: 10:30 am (You may sign in any time after 10:15 am)
End Time: 11:45 am
Panel Title: NLRB Updates Under the Biden Administration
Panel Monitor: (b) (6), (b) (6) <[@calawyers.org](mailto:(b) (6)@calawyers.org)>

Please feel free to join your panel up to 15 mins. before the start of your LIVE panel. A Virtual Presenter Checklist is attached for your reference.

Here are your individual Zoom Links for your presentation. Please use your personal link only.

Lauren McFerran

Please click this URL to join. (b) (6)

Note: This link should not be shared with others; it is unique to you.

Passcode: (b) (6)

Maria Anastas

Please click this URL to join. (b) (6)

Note: This link should not be shared with others; it is unique to you.

Passcode: (b) (6)

Monica Guizar

Please click this URL to join. (b) (6)

Note: This link should not be shared with others; it is unique to you.

Passcode: (b) (6)

Christy Kwon

Please click this URL to join. (b) (6)

Note: This link should not be shared with others; it is unique to you.

Passcode: (b) (6)

If you have any questions before your panel, please feel free to contact me or your panel monitor.

Thanks,

(b) (6)

(b) (6) | (b) (6)

California Lawyers Association

400 Capitol Mall, Suite 650 | Sacramento, CA 95814

o (b) (6) | c (b) (6) | (b) (6) <[@calawyers.org](mailto:(b) (6)@calawyers.org)>



From: [Kwon Christy](#)
To: (b) (6); [McFerran Lauren](#); [maria.anastas@ogletree.com](#); [monica.guizar@seiu.org](#)
Subject: RE: NLRB Updates Under the Biden Administration -- Slides and Order of Presentation
Date: Thursday, July 15, 2021 7:42:00 PM
Attachments: [image001.png](#)

(b) (6), thank you for all your technical support, before and during the panel. We couldn't have done this without you!

From: (b) (6) (b) (6) <(b) (6)@calawyers.org>
Sent: Thursday, July 15, 2021 11:51 AM
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O (b) (6) | C (b) (6) | (b) (6) <(b) (6)@calawyers.org>



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Cc: (b) (6); (b) (6) <(b) (6)@calawyers.org>; (b) (6); (b) (6) <(b) (6)@calawyers.org>
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Slide 2 – Lauren, State of the Board (10 minutes)
Slide 5 – 11 – Monica on PCA; Lauren about her views on Alstate and Quicken, Maria on her views if any (20 min)
Slide 12-15 – Monica on PCA inherently concerted doctrine; Maria/Lauren on their respective views if any (10 minutes)
Slides 16-22 – Maria, work rules/8a1; after each slide asks Monica/Lauren on their respective views if any (20 minutes)
Slides 23-34 – Monica on PRO ACT, then Maria on her view if any (Lauren may need to leave the panel at this point) (10 minutes)
Slides 35-36 – Christy will announce any Questions from participants (5 minutes)

Please call or email me with any questions tonight or tomorrow morning.

Thank you!
Christy

-----Original Appointment-----

From: (b) (6) (b) (6) <[@calawyers.org](mailto:(b) (6)@calawyers.org)>

Sent: Wednesday, July 14, 2021 11:48 AM

To: (b) (6); Lauren.McFerran@nlrb.gov; maria.anastas@ogletree.com; monica.guizar@seiu.org; Christy.Kwon@nlrb.gov

Subject: NLRB Updates Under the Biden Administration

When: Thursday, July 15, 2021 10:15 AM-11:45 AM (UTC-08 00) Pacific Time (US & Canada).

Where: Zoom

Importance: High

Hello Speakers,

Thank you for joining our **36th Annual Meeting of the Labor and Employment Law Section**. Here are your presentation details:

Date: July 15, 2021
Start Time: 10:30 am (You may sign in any time after 10:15 am)
End Time: 11:45 am
Panel Title: NLRB Updates Under the Biden Administration
Panel Monitor: (b) (6) (b) (6) <[@calawyers.org](mailto:(b) (6)@calawyers.org)>

Please feel free to join your panel up to 15 mins. before the start of your LIVE panel. A Virtual Presenter Checklist is attached for your reference.

Here are your individual Zoom Links for your presentation. Please use your personal link only.

Lauren McFerran

Please click this URL to join. (b) (6)

Note: This link should not be shared with others; it is unique to you.

Passcode: (b) (6)

Maria Anastas

Please click this URL to join. (b) (6)

Note: This link should not be shared with others; it is unique to you.

Passcode: (b) (6)

Monica Guizar

Please click this URL to join. (b) (6)

Note: This link should not be shared with others; it is unique to you.

Passcode: (b) (6)

Christy Kwon

Please click this URL to join. (b) (6)

Note: This link should not be shared with others; it is unique to you.

Passcode: (b) (6)

If you have any questions before your panel, please feel free to contact me or your panel monitor.

Thanks,

(b) (6)

(b) (6) (b) (6)

California Lawyers Association

400 Capitol Mall, Suite 650 | Sacramento, CA 95814

o (b) (6) | c (b) (6) | (b) (6) <[@calawyers.org](mailto:(b) (6)@calawyers.org)>



From: [Wilcox, Gwynne](#)
To: [David Prouty](#); [Craig Becker](#)
Cc: [McFerran, Lauren](#); [Alex Roe](#); (b) (6)
Subject: Re: invitation to speak to ULA Board of Directors
Date: Tuesday, August 10, 2021 6:49:10 AM

Craig—

Thank you for your invitations. I would be glad to attend but would need to find out what I can and cannot do.

Gwynne

Get [Outlook for iOS](#)

From: David Prouty <DProuty@seiu32bj.org>
Sent: Thursday, August 5, 2021 6:32:06 AM
To: Craig Becker <cbecker@aflcio.org>
Cc: McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>; Alex Roe <aroe@aflcio.org>; (b) (6) (b) (6) @aflcio.org
Subject: Re: invitation to speak to ULA Board of Directors

Thanks for the invite Craig - I'll be guided by you and Lauren as to what I can and cannot take, but I'd be happy to attend both.

Regards, Dave

On Aug 4, 2021, at 2:30 PM, Craig Becker <cbecker@aflcio.org> wrote:

NOTICE: This email originated from outside of SEIU 32BJ. Do not click links or open attachments from unfamiliar senders that you do not recognize or are not expecting. If you have any concerns, please open an IT Help Desk ticket.

Lauren, Gwynne and Dave:

It gives me enormous pleasure to invite the three of you to speak to the Union Lawyers Alliance Board of Directors on November 19 anytime between 1030 and 230 that works for you. Nothing formal needed. Just a few remarks from each of you and then a discussion. 45-60 minutes tops.

Assuming the Board of Directors is able to come to town, there will also be a dinner on the 18th at 630 that we would very much like you to attend if you can.

Thanks for considering and hope it can work.

All the best,

Craig

Craig Becker
General Counsel
AFL-CIO
815 16th St., N.W.
Washington, D.C. 20006
[\(202\)637-5310](tel:(202)637-5310)

From: [gwynne wilcox](#)
To: [Craig Becker](#); [David Prouty](#); [Alex Roe](#); (b) (6)
Cc: [McFerran, Lauren](#)
Subject: Re: ULA meeting
Date: Friday, September 24, 2021 10:33:24 AM

Craig—

I am awaiting a response from Ethics. I know they are working on it. I will keep you posted.

Gwynne

Get [Outlook for iOS](#)

From: Craig Becker <cbecker@aficio.org>
Sent: Friday, September 24, 2021 10:08:29 AM
To: David Prouty <(b) (6)>; Alex Roe <aroe@aficio.org>; (b) (6) <(b) (6)@aficio.org>
Cc: gwynne wilcox <(b) (6)>; McFerran, Lauren <lauren.mcferran@nlrb.gov>
Subject: Re: ULA meeting

Great. Thanks very much Dave. We will be back in touch asap with details. Craig

Craig Becker
General Counsel
AFL-CIO
815 Black Lives Matter Plaza, N.W.
Washington, D.C. 20006
[\(202\)637-5310](tel:(202)637-5310)

On Fri, Sep 24, 2021 at 9:47 AM David Prouty <(b) (6)> wrote:
Craig:

The NLRB Ethics Office has cleared me to participate in the November ULA meeting, as long as my remarks "only address matters of general applicability and not specific cases." I would also be happy to attend the dinner the evening before, but I will need to pay my own way.

Hope all's well. All good here so far.

Regards, Dave

From: [Craig Becker](#)
To: [McFerran, Lauren](#)
Cc: [Alex Roe](#); (b) (6)
Subject: Re: invitation to speak to ULA Board of Directors
Date: Thursday, October 14, 2021 10:21:20 AM

Wonderful. We will be back in touch with details as the date draws nearer. Thanks. Craig

Craig Becker
General Counsel
AFL-CIO
815 Black Lives Matter Plaza, N.W.
Washington, D.C. 20006
[\(202\)637-5310](tel:(202)637-5310)

On Thu, Oct 14, 2021 at 8:57 AM McFerran, Lauren <Lauren.McFerran@nlrb.gov> wrote:

Looks like my ethics clearance came through as well and I totally missed the email. I would be happy to participate, and appreciate the invitation.

Best,

Lauren

Lauren McFerran

Chairman, National Labor Relations Board

(she/her/hers)

1015 Half Street, SE

Washington, D.C. 20570

Follow us on Twitter: [@NLRBGC](#)/[@NLRB](#)

En español: [@NLRBGCes](#)/[@NLRBes](#)

From: Craig Becker <cbecker@aficio.org>
Sent: Thursday, October 14, 2021 8:33 AM
To: McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Alex Roe <aroe@aficio.org>;

(b) (6) <(b) (6)@aflcio.org>

Subject: Re: invitation to speak to ULA Board of Directors

Lauren: My apologies if you already responded to the below and I somehow overlooked it, but Dave and Gwynne have been cleared to join us and we hope you can as well. Can you please let us know if that will be possible? Thanks. Craig

Craig Becker
General Counsel
AFL-CIO
815 Black Lives Matter Plaza, N.W.
Washington, D.C. 20006
[\(202\)637-5310](tel:(202)637-5310)

On Wed, Aug 4, 2021 at 2:29 PM Craig Becker <cbecker@aflcio.org> wrote:

Lauren, Gwynne and Dave:

It gives me enormous pleasure to invite the three of you to speak to the Union Lawyers Alliance Board of Directors on November 19 anytime between 1030 and 230 that works for you. Nothing formal needed. Just a few remarks from each of you and then a discussion. 45-60 minutes tops.

Assuming the Board of Directors is able to come to town, there will also be a dinner on the 18th at 630 that we would very much like you to attend if you can.

Thanks for considering and hope it can work.

All the best,

Craig

Craig Becker
General Counsel
AFL-CIO
815 16th St., N.W.
Washington, D.C. 20006
[\(202\)637-5310](tel:(202)637-5310)

From: [David Prouty](#)
To: [Alex Roe](#)
Cc: [gwynne wilcox](#); [McFerran, Lauren](#); [Craig Becker](#); (b) (6); (b) (6)
Subject: Re: Union Lawyers Alliance Fall 2021 Board Meeting
Date: Thursday, November 4, 2021 3:39:40 PM

Thanks Alex. I'll be there for both. Just remember to send me a bill for my share of the meals!

On Thu, Nov 4, 2021 at 2:35 PM Alex Roe <aroe@aficio.org> wrote:

Good afternoon Gwynne, David, and Lauren,

Thank you for agreeing to take the time to speak at the November 19, 2021 ULA Board Meeting. We are so pleased that you will join us. Below are a few details, including regarding the dinner the prior evening that we hope you will be able to attend as well.

November 18 at 6:30 pm ET

Pre-meeting dinner at *Oyamel* on the corner of 7th and D streets N.W., Washington DC.

November 19 from 12:00 to 1:00 pm ET

You are invited to make a few remarks and engage in discussion with the ULA Board members. Lunch will be served. The meeting will take place in the Gompers Room in the AFL-CIO building at 815 Black Lives Matter Plaza, N.W.

Please note that proof of vaccination will be required to enter the AFL-CIO building. The form of such proof might be a vaccination card, photo of your card, or similar.

There are 47 members of our board. Roughly half of them will attend the meeting in person and the other half will attend virtually. Per AFL-CIO policy, you will be required to wear a mask when possible and make every effort to follow common social distancing protocols.

If you have any questions, please let me know. We are looking forward to seeing you!

Alex Roe
Managing Counsel
AFL-CIO Union Lawyers Alliance
815 Black Lives Matter Plaza N.W.
Washington, DC 20006
(301) 793-3143 (cell)
(202) 637-5214 (office)
aroe@aficio.org

She/her

From: [Alex Roe](#)
To: [McFerran, Lauren](#); [David Prouty](#); [gwynne wilcox](#)
Cc: [Craig Becker](#); (b) (6); (b) (6)
Subject: Fwd: Board Meeting
Date: Friday, November 5, 2021 4:24:03 PM

Good afternoon,

As explained below, lunch at the ULA Board meeting will be served on plates rather than as a buffet, so kindly let us know if you have dietary restrictions, including if you prefer a vegetarian meal.

Thanks and have a great weekend,

Alex

ULA Managing Counsel
(202) 637-5214

----- Forwarded message -----

From: (b) (6) <(b) (6)@aflcio.org>
Date: Fri, Nov 5, 2021 at 4:14 PM
Subject: Board Meeting
To: ULA Board of Directors <ulaboardofdirectors@aflcio.org>
Cc: Alex Roe <aroe@aflcio.org>, (b) (6), (b) (6)@aflcio.org

Good afternoon.

In an abundance of caution, this year we have decided not to serve lunch buffet-style. Instead, we are considering plated options.

Please let us know if you have any specific dietary restrictions that we should consider.

Thank you.

--

(b) (6)
(b) (6)

AFL-CIO/ Union Lawyers Alliance
815 Black Lives Matter Plaza, NW, 8th Floor
Washington, DC 20001

p (b) (6) f 202-637-5323
(b) (6)@aflcio.org

From: (b) (6)
Subject: ULA Board of Directors Meeting Menu Choice Form
Date: Wednesday, November 10, 2021 4:29:33 PM

Good afternoon Board Members.

Please take moment to fill out the menu form:

(b) (6)

Thank you.

--

(b) (6)

(b) (6)

AFL-CIO/ Union Lawyers Alliance
815 Black Lives Matter Plaza, NW, 8th Floor
Washington, DC 20001

p (b) (6) f 202-637-5323

(b) (6) [@aflcio.org](mailto:(b) (6)@aflcio.org)

From: (b) (6)
To: [McFerran, Lauren](#)
Cc: [Alex Roe](#); (b) (6)
Subject: Re: invitation to speak to ULA Board of Directors
Date: Wednesday, November 17, 2021 9:26:42 AM

Thanks Lauren. We'll have a couple of extras around if you should change your mind. :-)

On Wed, Nov 17, 2021 at 9:18 AM McFerran, Lauren <Lauren.McFerran@nlrb.gov> wrote:

I don't usually eat at these things, so no need to worry about ordering anything for me. Many thanks, though!

Best,

Lauren

From: Alex Roe <aroe@aficio.org>
Sent: Tuesday, November 16, 2021 8:07 PM
To: McFerran, Lauren <Lauren.McFerran@nlrb.gov>
Cc: (b) (6); (b) (6) <[\(b\) \(6\)@aficio.org](mailto:(b) (6)@aficio.org)>; (b) (6) <[\(b\) \(6\)@aficio.org](mailto:(b) (6)@aficio.org)>
Subject: Re: invitation to speak to ULA Board of Directors

Good evening Lauren,

Could you let us know your lunch preferences? Below are the choices. Thanks!

1) Sandwich

Chicken Salad w/ Feta (Red onions, arugula, lemon-pepper dressing wrapped in a tortilla)

Garden of Eden (Cucumber, alfalfa sprouts, tomato, low-fat swiss cheese, red peppers, onions, mushrooms, lettuce, fat-free cream, wheat bread)

Ham and Gruyere (Parsley butter spread, ham, Gruyere cheese on whole wheat bread)

Roast Beef & Brie (Lettuce, tomato, red onion, Dijon mustard on a Croissant)

2) Side

Chips

Small Salad

3) Dessert

Cookies

Brownie/Blondie

Alex

ULA Managing Counsel

(202) 637-5214

On Thu, Oct 14, 2021 at 8:57 AM McFerran, Lauren <Lauren.McFerran@nlrb.gov> wrote:

Looks like my ethics clearance came through as well and I totally missed the email. I would be happy to participate, and appreciate the invitation.

Best,

Lauren

Lauren McFerran

Chairman, National Labor Relations Board

(she/her/hers)

1015 Half Street, SE

Washington, D.C. 20570

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En español: [@NLRBGces](https://twitter.com/NLRBGces)/[@NLRBes](https://twitter.com/NLRBes)

From: Craig Becker <cbecker@aflcio.org>
Sent: Thursday, October 14, 2021 8:33 AM
To: McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Alex Roe <aroe@aflcio.org>;
(b) (6) <(b) (6)@aflcio.org>
Subject: Re: invitation to speak to ULA Board of Directors

Lauren: My apologies if you already responded to the below and I somehow overlooked it, but Dave and Gwynne have been cleared to join us and we hope you can as well. Can you please let us know if that will be possible? Thanks. Craig

Craig Becker
General Counsel
AFL-CIO
815 Black Lives Matter Plaza, N.W.
Washington, D.C. 20006
[\(202\)637-5310](tel:(202)637-5310)

On Wed, Aug 4, 2021 at 2:29 PM Craig Becker <cbecker@aflcio.org> wrote:

Lauren, Gwynne and Dave:

It gives me enormous pleasure to invite the three of you to speak to the Union Lawyers Alliance Board of Directors on November 19 anytime between 1030 and 230 that works for you. Nothing formal needed. Just a few remarks from each of you and then a discussion. 45-60 minutes tops.

Assuming the Board of Directors is able to come to town, there will also be a dinner on the 18th at 630 that we would very much like you to attend if you can.

Thanks for considering and hope it can work.

All the best,

Craig

Craig Becker
General Counsel
AFL-CIO
815 16th St., N.W.
Washington, D.C. 20006
[\(202\)637-5310](tel:(202)637-5310)

--

(b) (6)

(b) (6)

AFL-CIO/ Union Lawyers Alliance
815 Black Lives Matter Plaza, NW, 8th Floor
Washington, DC 20001

p (b) (6) f 202-637-5323

(b) (6) [@aflcio.org](mailto:(b)(6)@aflcio.org)

From: [Craig Becker](#)
To: [McFerran, Lauren](#)
Subject: Re: topics for Friday?
Date: Wednesday, November 17, 2021 9:09:24 PM

Lauren;

They will be thrilled to hear whatever you have to say, but here are a few ideas:

Your shift into chair, what does it mean re duties/authority.

Changes in process with new Members.

Changes in tone and relations with new Members.

How are you setting priorities

How are you thinking about Trump era rules and possible new rules

Status of challenges to removal of Robb

Changes in your relation to WH under Biden

Anything you can properly say about why Trump Board did not carry through on student employee and Excelsior list rulemakings

Anything you can properly say about final Emanuel ethics breaches (we are aware that one case had to be pulled back from DC Cir as a result).

Thanks.

Craig
Craig Becker
General Counsel
AFL-CIO
815 Black Lives Matter Plaza, N.W.
Washington, D.C. 20006
[\(202\)637-5310](tel:(202)637-5310)

On Tue, Nov 16, 2021 at 4:24 PM McFerran, Lauren <Lauren.McFerran@nlrb.gov> wrote:

Just checking in – did you have particular topics you wanted us to cover on Friday? I’m sure people are eager to hear from Gwynne and Dave regarding their perspectives as new Board Members, and I can give a general state of the agency update, but to the extent that there are specific topics that would be of interest to the group, let us know... (if it’s easier to talk by phone, I’m in the office and around today and tomorrow – (b) (6)).

Thanks,

Lauren

Lauren McFerran

Chairman, National Labor Relations Board

(she/her/hers)

1015 Half Street, SE

Washington, D.C. 20570

Follow us on Twitter: [@NLRBGC](#)/[@NLRB](#)

En español: [@NLRBGCes](#)/[@NLRBes](#)

From: [Kevin Brodar](#)
To: [Ring, John](#); [McFerran, Lauren](#); [Kaplan, Marvin E.](#); [Wilcox, Gwynne](#); [Prouty, David M.](#)
Cc: [Rothschild, Roxanne L.](#)
Subject: RE: ABA EEO Government Liaison Meeting, Washington, DC
Date: Friday, December 3, 2021 9:21:02 AM

Member Ring-

Thank you for the positive response. It appears that January 23-25 will be the dates.

We look forward to your participation.

Kevin Brodar

General Counsel
SMART-TD
24950 Country Club Blvd.
North Olmsted, OH 44070

From: Ring, John <John.Ring@nrlb.gov>
Sent: Friday, December 3, 2021 8:07 AM
To: Kevin Brodar <kbrodar@smart-union.org>; McFerran, Lauren <Lauren.McFerran@nrlb.gov>; Kaplan, Marvin E. <Marvin.Kaplan@nrlb.gov>; Wilcox, Gwynne <Gwynne.Wilcox@nrlb.gov>; Prouty, David M. <David.Prouty@nrlb.gov>
Cc: Rothschild, Roxanne L. <Roxanne.Rothschild@nrlb.gov>
Subject: RE: ABA EEO Government Liaison Meeting, Washington, DC

Kevin,
Thank you for the invitation. I plan to participate and can be available either week.
Best,

John F. Ring

Board Member
National Labor Relations Board
1015 Half Street SE Washington, DC 20570
john.ring@nrlb.gov | 202-273-2722

From: Kevin Brodar <kbrodar@smart-union.org>
Sent: Wednesday, December 1, 2021 3:37 PM

To: McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Ring, John <John.Ring@nlrb.gov>; Kaplan, Marvin E. <Marvin.Kaplan@nlrb.gov>; Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>; Prouty, David M. <David.Prouty@nlrb.gov>

Cc: Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>

Subject: ABA EEO Government Liaison Meeting, Washington, DC

Dear Board Members:

On behalf of the ABA National EEO Committee, we would like to invite you to the Annual EEO Government Liaison Meeting in Washington, DC. As you may know, the ABA has been hosting this meeting for senior US policymakers for decades. It provides a forum for a free exchange of ideas between senior members of the employer, employee, labor and in-house bars with senior US Government officials, all without press coverage or participation and without attribution. The invitees are strictly limited to facilitate ease of discussion. The event begins on Sunday evening with a cocktail reception. The program will be on Monday (full-day) and Tuesday (half-day). You are not expected to attend the entire meeting, but you are certainly welcome to if your schedule permits. We will schedule topic sessions around your availability.

We have two target dates available for a venue to be selected in Downtown Washington, DC.

The prospective dates are: January 9-11 or January 23-25.

Please let me know i) if you would like to attend, and
 ii) if these dates are available for your schedule.

Your earliest response will be greatly appreciated

Kevin Brodar, Union Co-Chair
Sarah Donch, In-House Corporate Counsel Co-Chair
Jennifer Liu, Employee Co-Chair
Robert J. O'Hara, Employer Co-Chair

Kevin Brodar

General Counsel
SMART-TD
24950 Country Club Blvd.
North Olmsted, OH 44070

From: [Kevin Brodar](#)
To: [Kaplan, Marvin E.](#); [Wilcox, Gwynne](#); [McFerran, Lauren](#); [Ring, John](#); [Prouty, David M.](#)
Cc: [Rothschild, Roxanne L.](#)
Subject: RE: ABA EEO Government Liaison Meeting, Washington, DC
Date: Friday, December 10, 2021 11:31:56 AM

Marvin-

We are sorry that you will not be able to attend. We hope to see you at the next meeting.

Kevin

From: Kaplan, Marvin E. <Marvin.Kaplan@nlrb.gov>
Sent: Friday, December 10, 2021 10:21 AM
To: Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>; Kevin Brodar <kbrodar@smart-union.org>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Ring, John <John.Ring@nlrb.gov>; Prouty, David M. <David.Prouty@nlrb.gov>
Cc: Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>
Subject: Re: ABA EEO Government Liaison Meeting, Washington, DC

Unfortunately, I will be unable to attend.

Best,

Marvin

Get [Outlook for iOS](#)

From: Wilcox, Gwynne <[Gwynne.Wilcox@nlrb.gov](#)>
Sent: Friday, December 10, 2021 10:18:01 AM
To: Kevin Brodar <[kbrodar@smart-union.org](#)>; McFerran, Lauren <[Lauren.McFerran@nlrb.gov](#)>; Ring, John <[John.Ring@nlrb.gov](#)>; Kaplan, Marvin E. <[Marvin.Kaplan@nlrb.gov](#)>; Prouty, David M. <[David.Prouty@nlrb.gov](#)>
Cc: Rothschild, Roxanne L. <[Roxanne.Rothschild@nlrb.gov](#)>
Subject: Re: ABA EEO Government Liaison Meeting, Washington, DC

Kevin—

Thank you for your invitation. I needed to check my schedule before responding to your invitation. I will be available during the January 23-25 time period.

Best regards,

Gwynne

Gwynne A. Wilcox

Member, National Labor Relations Board

Get [Outlook for iOS](#)

From: Kevin Brodar <kbrodar@smart-union.org>

Sent: Wednesday, December 1, 2021 3:37 PM

To: McFerran, Lauren; Ring, John; Kaplan, Marvin E.; Wilcox, Gwynne; Prouty, David M.

Cc: Rothschild, Roxanne L.

Subject: ABA EEO Government Liaison Meeting, Washington, DC

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Please let me know i) if you would like to attend, and
 ii) if these dates are available for your schedule.

Your earliest response will be greatly appreciated

Kevin Brodar, Union Co-Chair

Sarah Donch, In-House Corporate Counsel Co-Chair

Jennifer Liu, Employee Co-Chair

Robert J. O'Hara, Employer Co-Chair

Kevin Brodar

General Counsel

SMART-TD

24950 Country Club Blvd.

North Olmsted, OH 44070

From: [Kevin Brodar](#)
To: [Wilcox, Gwynne](#); [McFerran, Lauren](#); [Ring, John](#); [Kaplan, Marvin E.](#); [Prouty, David M.](#)
Cc: [Rothschild, Roxanne L.](#)
Subject: RE: ABA EEO Government Liaison Meeting, Washington, DC
Date: Friday, December 10, 2021 2:57:44 PM

Gwynne-

We look forward to seeing you there!! Once the hotel is confirmed, a formal invitation from the ABA will be sent. There is no registration fee, but it will require that you fill out information regarding vaccination status.

Kevin

From: Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Sent: Friday, December 10, 2021 2:46 PM
To: Kevin Brodar <kbrodar@smart-union.org>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Ring, John <John.Ring@nlrb.gov>; Kaplan, Marvin E. <Marvin.Kaplan@nlrb.gov>; Prouty, David M. <David.Prouty@nlrb.gov>
Cc: Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>
Subject: Re: ABA EEO Government Liaison Meeting, Washington, DC

Kevin—

I will be able to attend on those dates. Again, thank you for the invitation.

Best regards,

Gwynne

Get [Outlook for iOS](#)

From: Kevin Brodar <kbrodar@smart-union.org>
Sent: Friday, December 10, 2021 11:31:02 AM
To: Wilcox, Gwynne <[Gwynne.Wilcox@nlrb.gov](#)>; McFerran, Lauren <[Lauren.McFerran@nlrb.gov](#)>; Ring, John <[John.Ring@nlrb.gov](#)>; Kaplan, Marvin E. <[Marvin.Kaplan@nlrb.gov](#)>; Prouty, David M. <[David.Prouty@nlrb.gov](#)>
Cc: Rothschild, Roxanne L. <[Roxanne.Rothschild@nlrb.gov](#)>
Subject: RE: ABA EEO Government Liaison Meeting, Washington, DC

Gwynne-

Thank you. We hope you can attend. The date is now confirmed for January 23-25.

Stay well,

Kevin

From: Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Sent: Friday, December 10, 2021 10:18 AM
To: Kevin Brodar <kbrodar@smart-union.org>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Ring, John <John.Ring@nlrb.gov>; Kaplan, Marvin E. <Marvin.Kaplan@nlrb.gov>; Prouty, David M. <David.Prouty@nlrb.gov>
Cc: Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>
Subject: Re: ABA EEO Government Liaison Meeting, Washington, DC

Kevin—

Thank you for your invitation. I needed to check my schedule before responding to your invitation. I will be available during the January 23-25 time period.

Best regards,

Gwynne

Gwynne A. Wilcox
Member, National Labor Relations Board

Get [Outlook for iOS](#)

From: Kevin Brodar <kbrodar@smart-union.org>
Sent: Wednesday, December 1, 2021 3:37 PM
To: McFerran, Lauren; Ring, John; Kaplan, Marvin E.; Wilcox, Gwynne; Prouty, David M.
Cc: Rothschild, Roxanne L.
Subject: ABA EEO Government Liaison Meeting, Washington, DC

Dear Board Members:

On behalf of the ABA National EEO Committee, we would like to invite you to the Annual EEO Government Liaison Meeting in Washington, DC. As you may know, the ABA has been hosting this meeting for senior US policymakers for decades. It provides a forum for a free exchange of ideas between senior members of the employer, employee, labor and in-house bars with senior US Government officials, all without press coverage or participation and without attribution. The invitees are strictly limited to facilitate ease of discussion. The event begins on Sunday evening with a cocktail reception. The program will be on Monday (full-day) and Tuesday (half-day). You are not expected to attend the entire meeting, but you are certainly welcome to if your schedule permits. We will schedule topic sessions around your availability.

We have two target dates available for a venue to be selected in Downtown Washington, DC.

The prospective dates are: January 9-11 or January 23-25.

Please let me know i) if you would like to attend, and
 ii) if these dates are available for your schedule.

Your earliest response will be greatly appreciated

Kevin Brodar, Union Co-Chair

Sarah Donch, In-House Corporate Counsel Co-Chair

Jennifer Liu, Employee Co-Chair

Robert J. O'Hara, Employer Co-Chair

Kevin Brodar

General Counsel

SMART-TD

24950 Country Club Blvd.

North Olmsted, OH 44070

From: [Alex Roe](#)
To: [McFerran, Lauren](#)
Cc: [Craig Becker](#)
Subject: Re: Invitation to speak at ULA Annual Conference
Date: Friday, February 18, 2022 3:27:20 PM

That's great news, thank you Lauren. We are still figuring out the schedule, but the 17th is the tentative date for your presentation. We should have firmer dates in place next week.

Alex

Alex Roe
ULA Managing Counsel
(202) 637-5214 (o)
(301) 793-3143 (c)
she/her

On Fri, Feb 18, 2022 at 3:24 PM McFerran, Lauren <Lauren.McFerran@nlrb.gov> wrote:

Good afternoon,

I would be happy to participate in the conference. Would the presentation by the NLRB folks be on the 17th or is that still to be determined?

Best,

Lauren

From: Alex Roe <aroe@aficio.org>
Sent: Wednesday, February 9, 2022 3:00 PM
To: McFerran, Lauren <Lauren.McFerran@nlrb.gov>
Cc: Craig Becker <cbecker@aficio.org>
Subject: Invitation to speak at ULA Annual Conference

Dear Lauren,

We are delighted to invite you and your colleagues to speak at the ULA Annual Conference that will take place on May 16-18, 2022 in Portland, Oregon. Attached is a letter with the invitation and more details, including the option to present virtually should that be your preference. I hope that you are able to join us and look forward to hearing from you.

Best,

Alex

Alex Roe

Managing Counsel

AFL-CIO Union Lawyers Alliance

815 Black Lives Matter Plaza N.W.

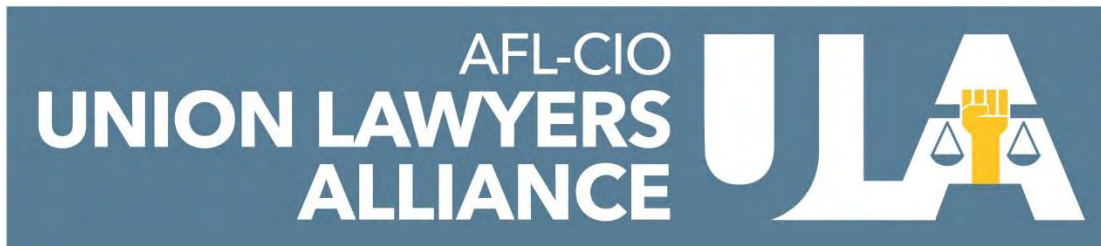
Washington, DC 20006

(301) 793-3143 (cell)

(202) 637-5214 (office)

aroe@aficio.org

She/her



February 9, 2022

Lauren McFerran
Chair
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Dear Chair McFerran,

We write to invite you to speak at the AFL-CIO Union Lawyers Alliance annual conference, which will take place May 16-18, 2022 in Portland, Oregon, at the Hilton Portland Downtown. This will be the first in-person annual conference the ULA has held since 2019. Your appearance would add to the excitement about gathering together once again to gain knowledge, skills, and inspiration from each other's work.

The agenda is still in draft form, but we would like one of the plenaries to include a panel with you as well as Member Wilcox, Member Prouty, and General Counsel Abruzzo. As a plenary speaker, you would have the option to appear virtually, if that is preferable. If you choose to attend in-person, the ULA will cover your travel expenses, including airfare, two nights' stay at the hotel, and other related costs.

We hope that you are able to accept this invitation. If there are particular topics you would like to address or specific time/date conflicts, please let us know so that we can plan accordingly. If you have any questions, please contact any one of the ULA staff at the email addresses or phone numbers listed below.

With warm regards,

Craig and Alex

Craig Becker, Executive Director, cbecker@aflcio.org (202) 637-5310
Alex Roe, Managing Counsel, aroe@aflcio.org (202) 637-5214

(b) (6), (b) (6), (b) (6) @aflcio.org (b) (6)

(b) (6), (b) (6), (b) (6) @aflcio.org (b) (6)

From: [Alex Roe](#)
To: [McFerran, Lauren](#)
Subject: Confirmation letter for ULA Annual Conference
Date: Monday, March 28, 2022 2:17:09 PM
Attachments: [Speaker Confirmation Letter Lauren McFerran.docx.pdf](#)
[ULA Annual Conference Tentative Schedule in Brief.docx.pdf](#)

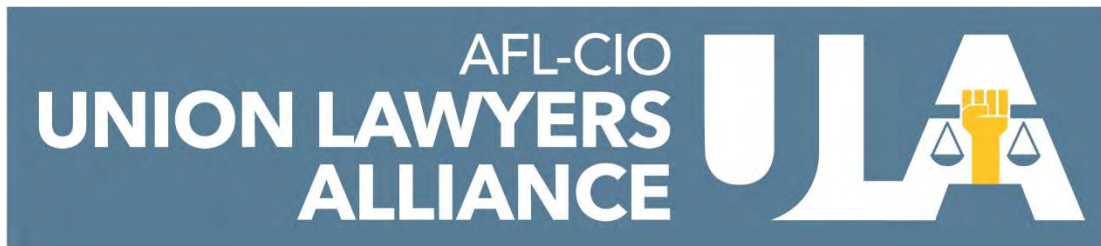
Good afternoon Lauren,

We are looking forward to hearing from you and your colleagues at the ULA annual conference in Portland, Oregon. Attached to this email is a confirmation letter with a link to provide us with the details we will need for your hotel stay, as well as other guidelines. I am also attaching a tentative conference schedule to help you plan. If you have any questions, please contact me at your convenience.

With kind regards,
Alex

Alex Roe
Managing Counsel
AFL-CIO Union Lawyers Alliance
815 Black Lives Matter Plaza N.W.
Washington, DC 20006
(301) 793-3143 (cell)
(202) 637-5214 (office)
aroe@aficio.org

She/her



March 28, 2022

Dear Chair McFerran:

Thank you for agreeing to speak at the 2022 AFL-CIO Union Lawyers Alliance Annual Conference in Portland, Oregon. Below are some details about the conference and your session. If you have questions about the conference generally, you may contact the ULA at the email addresses or phone numbers listed below.

Alex Roe
ULA Managing Counsel
aroe@aflcio.org
(301) 793-3143 cell
(202) 637-5214 office

(b) (6)
(b) (6)
(b) (6) @aflcio.org
(b) (6)

Your Hotel Stay

We will cover the costs of your hotel room, including taxes, at the Hilton Portland Downtown or its sister hotel next door, the Duniway.

Please do not contact the hotel directly for your reservation, even if you plan on staying for longer than the conference. We will book additional nights, before or after the conference, as indicated on your form (linked below), but those will be billed to you upon check out. The ULA will not cover amenities such as movies or room service. If you have already booked rooms with the hotel, please cancel them and use our form instead.

Please fill out the form [LINKED HERE](#) to provide the details of your planned hotel stay.

Conference Dates

The conference will begin at 5:30 pm PDT on Monday, May 16, 2022 and will last through midday on Wednesday, May 18, 2022.

Other Travel Expenses

The ULA will reimburse reasonable travel expenses, including airfare and/or ground travel. We ask that you use the cheapest airfare possible, and we do not reimburse for meals or entertainment. You will be provided a speaker reimbursement form, to which you must attach your supporting receipts. Reimbursement requests will not be considered until after the conference, and must be received no later than August 31, 2022.

Your Session

You are scheduled to present during the morning plenary session, along with NLRB Members Prouty and Wilcox, on **Tuesday, May 17, from 8:45 a.m. to 9:30 a.m. PDT**. Your presentation will be preceded by that of NLRB General Counsel Abruzzo. Please see the attached tentative schedule in brief for more information about the conference. You are also invited to join the Women's Caucus lunch on **Wednesday, May 18 from 12:30 p.m. to 2:00 p.m. PDT**.

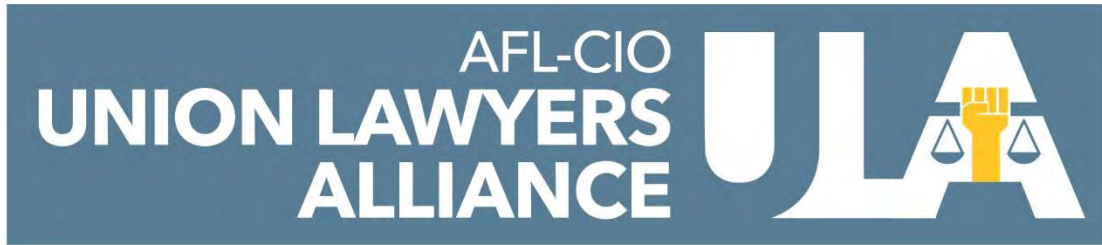
Visual Aids

If you choose to use visual aids (typically slides) during your presentation, please send a copy of any slides or other media to Alex Roe and (b) (6) by **May 6, 2022**. If you are using video or other special effects in your Power Point, please let us know because we will otherwise load the slides as a pdf and those effects will not come through.

Thank you again for contributing to the success of the conference and the experience of your ULA colleagues.

With regards,

Alex Roe
ULA Managing Counsel
815 Black Lives Matter Plaza
Washington, DC 20006



ULA Annual Conference
COMING TOGETHER AGAIN:
The Labor Movement Post-Pandemic

Portland, OR
Portland Hilton
May 16-18, 2022

Tentative Schedule All Times Listed are PDT

MONDAY, MAY 16, 2022

Opening Plenary: 5:30 p.m. - 7:00 p.m.

Welcome from AFL-CIO President Liz Shuler

Breaking the Glass Ceiling: The First Generation of Female General Counsels

Opening Reception: 7:00 p.m. - 8:30 p.m.

New Lawyer Gathering: 8:30 p.m. – 10:30 p.m.

TUESDAY, MAY 17, 2022

Plenary: 8:00 a.m. - 9:30 a.m.

8:00 a.m.: *NLRB General Counsel Abruzzo*

8:45 a.m.: *NLRB Chair McFerran, and Members Wilcox and Prouty*

Morning Breakout Sessions: 9:45 a.m. - 11:00 a.m. & 11:15 a.m. - 12:30 p.m.

- White Washing History: Public Employees and the Attack on Critical Race Theory
- Applying *Bostock* to Bargaining, Benefits, and Litigation
- The TCPA, Facebook v Duguid and What Lawyers Need to Know About New Tech
- NLRB New Developments
- Representing Immigrant Workers

Lawyers of Color Caucus Lunch: 12:45 p.m. – 2:15 p.m.

DEI Session for non-LCC Members: 12:45 p.m. – 2:15 p.m.

Afternoon Breakout Sessions: 2:30 p.m. - 3:45 p.m. & 4:00 p.m. - 5:15 p.m.

- Community Campaigns and Nonprofit Organizations
- Ethics and Internal Investigations
- Preemption, Procurement, and Ethics in State and Local Political Politics
- Best Practices to Prevent Hacking and Stealing of Member's and Other Information
- Lessons from the Pandemic: Remote Hearings

Evening Reception: 6:00 p.m. - 7:30 p.m.

WEDNESDAY, MAY 18, 2022

ULA Board Meeting: 7:00 a.m. – 8:00 a.m.

Plenary: 8:00 a.m. - 9:00 a.m.

Maya Wiley, President and CEO, the Leadership Conference on Civil and Human Rights

Morning Breakout Sessions: 9:15 a.m. - 10:30 a.m. & 10:45 a.m. - 12:00 p.m.

- Election Law Primer and Looking to November 2022
- How to Help Leaders Build and Anti-Racist Union
- Remote Union Meetings: Practical and Legal Issues
- Recent Organizing Case Studies

Women's Caucus Lunch: 12:30 p.m. – 2:00 p.m.

From: [Roger King](#)
To: (b) (6)
Cc: [Lynn Rhinehart](#); [Ed Chambers](#); [Richard Griffin](#); [Wilma Liebman](#); [Judy Conti](#); [Abruzzo, Jennifer](#); [Carter, Abigail](#); [CHARLOTTE BURROWS](#); [JOCELYN SAMUELS](#); [Vicky Byrd](#); [Melissa Cropper](#); [McFerran, Lauren](#)
Subject: Re: [EXTERNAL] Re: The 2022 Big Sky Labor and Employment Conference
Date: Sunday, April 3, 2022 7:01:40 PM

Eileen – great news -we are still finalizing the agenda – if Secty Walsh comes we are thinking of having she and Marty lead off the Conf on Aug 3 – if not we have Liz leading an agenda segment on union organizing, strike activity and collective agreements developments on Aug 4- does she have a preference on dates between Aug 3 , 4 and 5 ? Again we are delighted she will be with us in Big Sky in August.

From: (b) (6) @aflcio.org>
Date: Friday, April 1, 2022 at 10:49 AM
To: Roger King <rking@hrpolicy.org>
Subject: Re: [EXTERNAL] Re: The 2022 Big Sky Labor and Employment Conference

Hi Roger,

I hope you are well.

Confirming Liz will be available to speak at the conference in August. Could you please let me know which date she would speak?

Thank you!

Kind regards,

(b) (6)
AFL-CIO Office of the President

On Mon, Mar 21, 2022 at 10:28 AM Roger King <rking@hrpolicy.org> wrote:

(b) (6) - certainly- no worries- if you need a few more weeks that is fine - we hope to realize a final agenda by mid April

Sent from my iPhone

On Mar 21, 2022, at 7:22 AM, (b) (6) <(b) (6)@aflcio.org> wrote:

Good morning Roger,

Thank you for following up and for your patience.

May I have until the end of this week to get back to you, please? I am bumping this

request to the top of President Shuler's incoming speaking request list.

Kind regards,

(b) (6)

On Mon, Mar 21, 2022 at 10:13 AM Roger King <rking@hrpolicy.org> wrote:

Good Morning (b) (6),

I am follow up on the invitation for President Shuler to speak at the 2022 Big Sky Labor and Employment Conference on August 3-5, 2022 in Big Sky, Montana. Please let me know if you have any questions or need additional information regarding the conference.

Thank you,

G. Roger King

HR Policy Association

1001 19th Street North, Suite 1002 | Arlington, VA 22209

Direct: 202-375-5004 | Cell: 614-582-3939 | rking@hrpolicy.org

Assistant: Katie Strete | 313-774-0261 | kstrete@hrpolicy.org

From: (b) (6) <(b) (6)@aflcio.org>

Date: Tuesday, January 11, 2022 at 3:00 PM

To: (b) (6) <(b) (6)@hrpolicy.org>

Cc: "cneff@aflcio.org" <cneff@aflcio.org>, "Roger King (HR Policy)" <rking@hrpolicy.org>

Subject: Re: [EXTERNAL] Re: The 2022 Big Sky Labor and Employment Conference

Hi (b) (6),

Great, thank you. Please feel free to check in with me directly at any time.

Many thanks,

Eileen

On Tue, Jan 11, 2022 at 2:42 PM (b) (6) <(b) (6)@hrpolicy.org> wrote:

Hi Eileen,

The conference will be held on August 3 – 5 in Big Sky, Montana.

Thank you,

(b) (6)

(b) (6)

Office: (b) (6)
Fax: [\(614\) 423-2991](tel:6144232991)

From: (b) (6) <(b) (6)@aflcio.org>
Date: Tuesday, January 11, 2022 at 2:29 PM
To: "Roger King (HR Policy)" <rking@hrpolicy.org>
Cc: "cneff@aflcio.org" <cneff@aflcio.org>, (b) (6) <(b) (6)@hrpolicy.org>
Subject: [EXTERNAL] Re: The 2022 Big Sky Labor and Employment Conference

Hi Roger,

Thank you so much for sharing this information. Could you please let me know what date the conference will be held in August? I will get back to you regarding President Shuler's availability as soon as possible.

I know President Shuler will appreciate this invitation - thanks again!

Kind regards,
(b) (6)
AFL-CIO Office of the President

On Tue, Jan 11, 2022 at 1:20 PM Roger King <rking@hrpolicy.org> wrote:

Chris and (b) (6),

Please find the attached invitation for President Shuler to speak at the 2022 Big Sky Labor and Employment Conference.

Thank you,

G. Roger King
HR Policy Association
1001 19th Street North, Suite 1002 | Arlington, VA 22209
Direct: 202-375-5004 | Cell: 614-582-3939 | rking@hrpolicy.org
Assistant: Katie Strete | 313-774-0261 | kstrete@hrpolicy.org

From: [Union Lawyers Alliance](#)
To: [McFerran, Lauren](#)
Subject: Lauren McFerran 2022 AFL-CIO ULA Speaker Hotel Confirmation
Date: Monday, April 11, 2022 4:42:32 PM

Thank you for sending us your hotel needs for the conference. Once your hotel room has been booked, you will receive a confirmation email from the AFL-CIO. Below is the information you submitted to us. Please contact (b) (6) @aflcio.org or 202-637-5215 if you have any changes to your hotel information.

Name
Lauren McFerran
Email
lauren.mcferran@nrlb.gov
Cell Phone Number
(b) (6)
Do you need a hotel room?
Yes, I will list my hotel dates below
Arrival Date
05/16/2022
Departure Date
05/18/2022
Total Number of Nights Staying at the Hotel
2
Room Type
1 King Bed
Allergies?
<ul style="list-style-type: none">• None

From: [Alex Roe](#)
To: [Alex Roe](#)
Cc: [Craig Becker](#); (b) (6)
Subject: Please Join the ULA Board for Breakfast on Wednesday, May 18 at the Hilton Portland Downtown
Date: Friday, April 22, 2022 4:00:22 PM

CAUTION: The sender of this message is external to the NLRB network. Please use care when clicking on links and responding with sensitive information. Forward suspicious emails to nrbirc@nrlb.gov.

Greetings,

You are receiving this invitation as a special guest presenter at the Union Lawyers Alliance 2022 Annual Conference in Portland, Oregon.

On behalf of the ULA Board of Directors, I cordially invite you to join us for an informal breakfast meeting on Wednesday, May 18 from 7:00 a.m. to 8:00 a.m. in the Hotel's beautiful Skyline Room. This will be an opportunity to combine your morning coffee with friendly conversation and panoramic views of the city.

As always, if you have any questions, don't hesitate to reach out to me or ULA

(b) (6).

With many thanks for your contributions to our conference,
Alex

Alex Roe
Managing Counsel
AFL-CIO Union Lawyers Alliance
815 Black Lives Matter Plaza N.W.
Washington, DC 20006
(301) 793-3143 (cell)
(202) 637-5214 (office)
aroe@aflcio.org

She/her

From: [Alex Roe](#)
To: [Alex Roe](#)
Cc: (b) (6)
Subject: Your Hotel Room Confirmation for ULA Conference
Date: Monday, May 2, 2022 2:52:23 PM

CAUTION: The sender of this message is external to the NLRB network. Please use care when clicking on links and responding with sensitive information. Forward suspicious emails to [nlrbirc@nrlrb.gov](mailto:nlrbiirc@nrlrb.gov).

Good afternoon,

You are receiving this email because you are on the hotel's list of confirmed reservations as well as our list of speakers or staff for whom we are covering all or part of your stay.

You should have received an email from the hotel with the check in and out dates for your reservation. **Please review that information and make sure it's consistent with your plans.** It should include your entire stay, even any nights not covered by the ULA.

If you did not receive a confirmation or if the dates are incorrect, please let me know ASAP.

Many thanks,
Alex

Alex Roe
Managing Counsel
AFL-CIO Union Lawyers Alliance
815 Black Lives Matter Plaza N.W.
Washington, DC 20006
(301) 793-3143 (cell)
(202) 637-5214 (office)
aroe@aficio.org

She/her

From: [Alex Roe](#)
To: [Alex Roe](#)
Subject: Looking forward to the 2022 ULA Annual Conference
Date: Monday, May 2, 2022 4:32:28 PM
Attachments: [ULA 2022 Conference Printed Schedule bpr.pdf](#)

CAUTION: The sender of this message is external to the NLRB network. Please use care when clicking on links and responding with sensitive information. Forward suspicious emails to nrbirc@nrlb.gov.

Good afternoon,

You are receiving this email as an invited guest or non-member speaker at the ULA Annual Conference in Portland, Oregon on May 16-18, 2022.

Attached to this email is a copy of the conference schedule. For those of you who are attending in-person, please note that all in-person attendees will be required to show proof of up-to-date COVID vaccination per CDC guidelines. For most people, this means the initial course of vaccination(s) plus at least one booster. You may show your vaccination card or a picture thereof (e.g., on your phone) to satisfy this requirement.

Please also note that we will require masks for audience members during the plenary and breakout sessions.

We are looking forward to seeing you and thank you for your support.

Regards,
Alex Roe
Managing Counsel
AFL-CIO Union Lawyers Alliance
815 Black Lives Matter Plaza N.W.
Washington, DC 20006
(301) 793-3143 (cell)
(202) 637-5214 (office)
aroe@aficio.org

She/her

ULA ANNUAL CONFERENCE

Hilton Portland Downtown • Portland, Oregon • May 16–18, 2022



COMING TOGETHER AGAIN

The Labor
Movement
Post-Pandemic

AFL-CIO
UNION LAWYERS
ALLIANCE



COMING TOGETHER AGAIN

The Labor
Movement
Post-Pandemic

MONDAY MAY 16, 2022

NOON–5 P.M.

CONFERENCE REGISTRATION

PLAZA FOYER

5:30–7 P.M.

PLENARY I

GRAND BALLROOM I

Welcome to Portland

CRAIG BECKER General Counsel, AFL-CIO, and Union Lawyers Alliance (ULA)
Executive Director, Washington, D.C.

GRAHAM TRAINOR (IBEW) President, Oregon AFL-CIO, Portland, Oregon

Opening Remarks

LIZ SHULER President, AFL-CIO

Breaking the Glass Ceiling:

The First Generation of Female General Counsels

ALLISON BECK Former General Counsel, Machinists

KATHY KRIEGER Former General Counsel, United Brotherhood of Carpenters
and Joiners of America

MARY O'MELVENY Former General Counsel, Communications Workers of America

LYNN RHINEHART Former General Counsel, AFL-CIO (Moderator)

7–8:30 P.M.

OPENING RECEPTION

ATRIUM AND ATRIUM FOYER

*Please join your colleagues for beer, wine, soda,
hors d'oeuvres and good fellowship.*

8:30–10:30 P.M.

NEW LAWYERS GATHERING

DUNIWAY HOTEL MAYROSE BAR

*ULA members with five or fewer years since passing
the bar are invited to enjoy each other's company along
with light refreshments.*

ULA ANNUAL CONFERENCE

HILTON PORTLAND DOWNTOWN
PORTLAND, OREGON
MAY 16–18, 2022

TUESDAY MAY 17, 2022

6:30 A.M.–4 P.M.

CONFERENCE REGISTRATION

PLAZA FOYER

6:30–8 A.M.

CONTINENTAL BREAKFAST

GRAND BALLROOM FOYER

8–9:30 A.M.

PLENARY II

GRAND BALLROOM

NLRB General Counsel

JENNIFER ABRUZZO General Counsel, National Labor Relations Board, Washington, D.C.

NLRB Democratic Board Members

LAUREN MCFERRAN Chair, National Labor Relations Board, Washington, D.C.

DAVID PROUTY Member, National Labor Relations Board, Washington, D.C.

GWYNNE WILCOX Member, National Labor Relations Board, Washington, D.C.

9:45–11 A.M. and 11:15 A.M.–12:30 P.M.

MORNING BREAKOUT SESSIONS

A-1 Public Employees' First Amendment Rights:

GALLERIA NORTH

Restrictions on the Teaching of History and Other Current Issues

MODERATOR

HANNAH WEINSTEIN Rothner, Segall & Greenstone, Pasadena, California

PANELISTS

GENEVIEVE TORRES Lawyers' Committee for Civil Rights Under Law, Washington, D.C.

SARAH DRESCHER Tedesco Law Group, Portland, Oregon

A-2 Applying Bostock to Bargaining, Benefits and Litigation

BROADWAY

MODERATOR

GEOFF LEONARD Levy Ratner, New York, New York

PANELISTS

CASEY PITTS Altshuler Berzon, San Francisco, California

AMY WHELAN National Center for Lesbian Rights, San Francisco, California

JULIA LUM Leonard Carder, Oakland, California

A-3 Call Me Maybe: What Lawyers Need to Know About New Tech PAVILION EAST

MODERATOR

SANNI LEMONIDIS Lemonidis Consulting & Law Group, Seattle, Washington

PANELISTS

BRANDON BOSWELL American Federation of Teachers, Washington, D.C.

KATY DUNN Service Employees International Union Local 32BJ, New York, New York

NICOLE HORBERG DECTER Segal Roitman, Boston, Massachusetts

A-4 NLRB New Developments

ATRIUM BALLROOM

MODERATOR

JEFF MACEY Macey Swanson Hicks & Sauer, Indianapolis, Indiana

PANELISTS

CATHY HIGHET Highet Law, Portland, Oregon

EMILY PEREZ Hammond & Shinnors, Des Peres, Missouri

A-5 Representing Immigrant Workers

GALLERIA SOUTH

MODERATOR

RAVEN HALL Associate General Counsel, AFL-CIO, Washington, D.C.

PANELISTS

MONICA GUIZAR Associate General Counsel, Service Employees International Union, Los Angeles, California

JESSICA RUTTER Associate General Counsel, National Labor Relations Board, Washington, D.C.

12:45–2:15 P.M.

LAWYERS OF COLOR CAUCUS LUNCHEON

SKYLINE I

Open to ULA Members Who Identify as Persons of Color

ORGANIZERS/FACILITATORS

JENNIFER DISOTELL Federal Mediation and Conciliation Service, Seattle, Washington

MINDY HOLMES Murphy Anderson, Washington, D.C.

EMIL TOTONCHI Operating Engineers Local 150, Countryside, Illinois

LIGIA VELAQUEZ Federal Mediation and Conciliation Service, Seattle, Washington

12:45–2:15 P.M.

DEI LUNCHEON

GRAND BALLROOM II

Doing DEI Work with Intent and Integrity

AHMMAD BROWN Northwestern University School of Education and Social Policy/EBDI, Chicago, Illinois

TUESDAY MAY 17, 2022

2:30–3:45 P.M. and 4–5:15 P.M.

AFTERNOON BREAKOUT SESSIONS

B-1 How to Help Leaders Build an Anti-Racist Union

BROADWAY

MODERATOR

IVY YAN McCracken, Stemerman & Holsberry, San Francisco, California

PANELISTS

MELISSA MATOS National Employment Law Project, Washington, D.C.

STEVEN PITTS, Ph.D. Berkeley Labor Center, Berkeley, California

MELISSA WOODS Cohen, Weiss and Simon, New York, New York

B-2 Ethical Issues Related to Internal Union Affairs

PAVILION EAST

MODERATOR

MELISSA CHAN Service Employees International Union Local 32BJ, New York, New York

PANELISTS

CATHERINE FISK Berkeley Law, Berkeley, California

SARAH DERRY Barnard Iglitzin & Lavitt, Seattle, Washington

B-3 State and Local Initiatives to Assist Organizing and Raise Standards: What Can Be Done and How to Avoid Risks to Our Elected Allies and Ourselves

GALLERIA NORTH

MODERATOR

BART SHEARD Legislative Representative, AFL-CIO, Washington, D.C.

PANELISTS

LEON DAYAN Bredhoff & Kaiser, Washington, D.C.

ARTHUR LIOU Leonard Carder, Oakland, California

MELANIE LUTHERN ALLEN Schwartz, Steinsapir, Dohrmann & Sommers, Los Angeles, California

B-4 Hacking and Data Theft Prevention for Union Lawyers

ATRIUM BALLROOM

MODERATOR

NICOLAS MENDOZA Murphy Anderson, Washington, D.C.

PANELISTS

AMY CU Schwartz, Steinsapir, Dohrmann & Sommers, Los Angeles, California

DAVID JURY United Steelworkers, Pittsburgh, Pennsylvania

DANIELLE VAN LIER SAG-AFTRA, Los Angeles, California

B-5 Lessons from the Pandemic: Remote Hearings

GALLERIA SOUTH

MODERATOR

GENING LIAO Operating Engineers Local 3, Alameda, California

PANELISTS

JUDIANN CHARTIER Communications Workers of America, Washington, D.C.

ANDREA DOOLEY Arbitrator, Oakland, California

DAVID FUJIMOTO Weinberg, Roger & Rosenfeld, Emeryville, California

6–7:30 P.M.

EVENING RECEPTION

SKYLINE I AND II

Join us for light food and beverages while enjoying beautiful views of Portland and the company of your colleagues.

WEDNESDAY MAY 18, 2022

7–9:30 A.M.

CONFERENCE REGISTRATION

PLAZA FOYER

7–8 A.M.

ULA BOARD OF DIRECTORS BREAKFAST

SKYLINE I

6:30–8 A.M.

CONTINENTAL BREAKFAST

GRAND BALLROOM FOYER

8–9 A.M.

PLENARY III

GRAND BALLROOM

Civil and Human Rights and the Labor Movement

MAYA WILEY President and CEO, The Leadership Conference on Civil and Human Rights, Washington, D.C.

MINDY HOLMES Murphy Anderson, Washington, D.C. (Discussant)

9:30–10:45 A.M. and 11 A.M.–12:15 P.M.

MORNING BREAKOUT SESSIONS

C-1 Organizing in the 21st Century:

Starbucks, Joy Silk and Organizing Misclassified Workers

MODERATOR

SARAH KANBAR Beeson, Tayer & Bodine, Sacramento, California

PANELISTS

IAN HAYES Hayes Dolce, Buffalo, New York

HECTOR DE HARO Bush Gottlieb, Glendale, California

GALLERIA SOUTH

C-2 Election Law Primer and Looking to November 2022

MODERATOR

JASON VENY Murphy Anderson, Washington, D.C.

PANELISTS

LAURENCE E. GOLD Trister, Ross, Schadler & Gold, Washington, D.C.

RENATA STRAUSE Trister, Ross, Schadler & Gold, Washington, D.C.

GALLERIA NORTH

C-3 Community Campaigns and Nonprofit Organizations

MODERATOR

CORINNA SPENCER-SCHEURICH Northwest Workers' Justice Project, Portland, Oregon

PANELISTS

MICHAEL DALE Northwest Workers' Justice Project, Portland, Oregon

ELI NADURIS-WEISSMAN Rothner, Segall & Greenstone, Pasadena, California

MANUEL QUINTO-POZOS Deats Durst & Owen, Austin, Texas

BROADWAY

WEDNESDAY MAY 18, 2022

C-4 Remote Union Meetings: Practical and Legal Issues

PAVILION EAST

MODERATOR

RENEE SANCHEZ Hayes, Ortega & Sanchez, Monrovia, California

PANELISTS

JIM JONES Parliamentary Associates, Chicago, Illinois

JASON McCLITIS Blake & Uhlig, Kansas City, Kansas

MEGAN MECHAK McGillivray Steele Elkin, Washington, D.C.

12:30–2 P.M.

WOMEN'S CAUCUS LUNCHEON

SKYLINE I

Open to ULA Members Who Identify as Women

Join us for a fun, informal program designed to encourage networking, discussion and support centered on the experience of women labor lawyers.

**END OF ULA 2022 CONFERENCE
THANK YOU FOR ATTENDING!**

HOTEL FLOOR PLANS

Ballroom Level

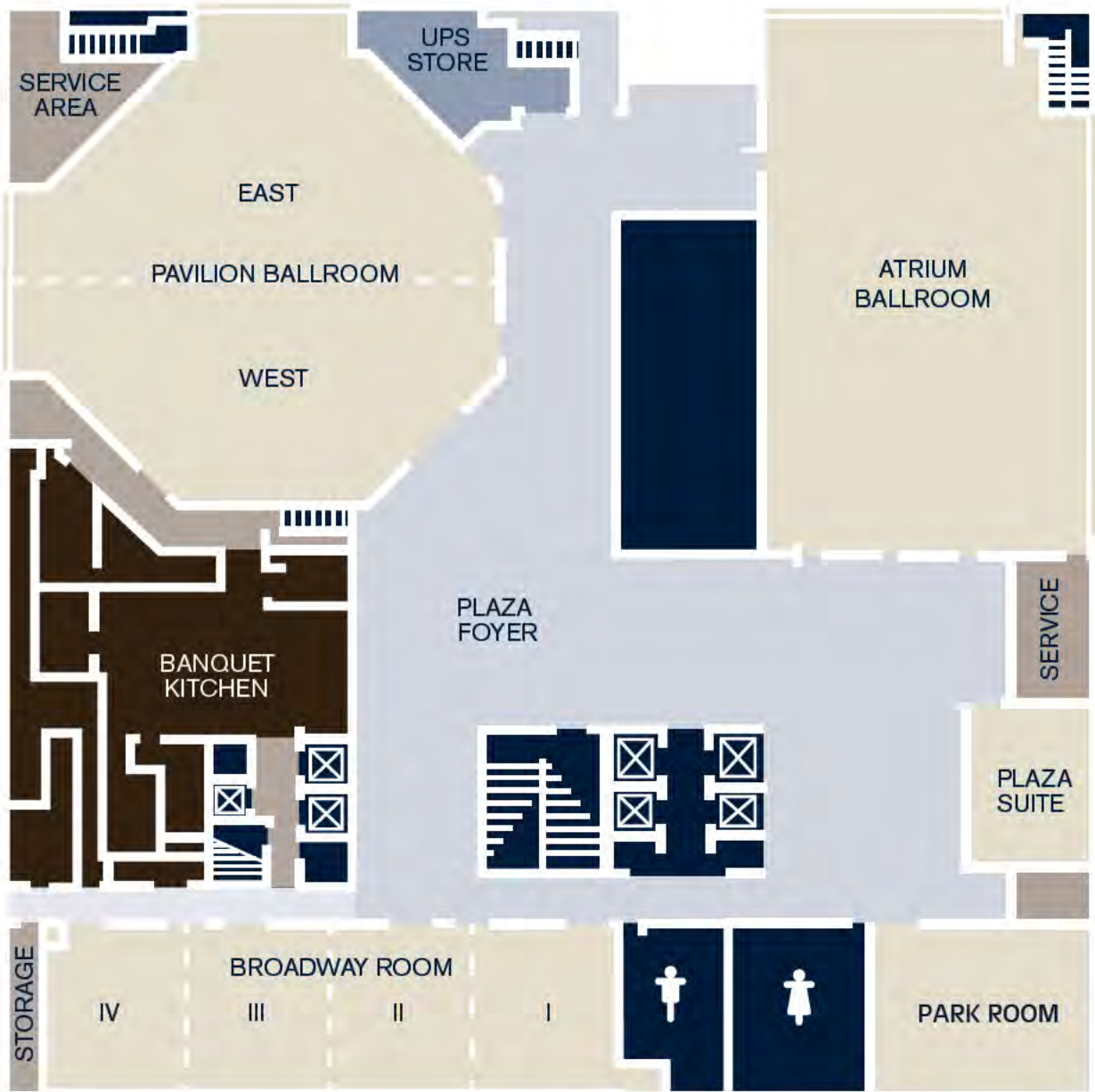


23rd Floor, Skyline Level



HOTEL FLOOR PLANS

Plaza Level





From: [Matthew Ginsburg](#)
To: [Prouty, David M.](#); [McFerran, Lauren](#); [Wilcox, Gwynne](#)
Subject: Upcoming plenary at ULA conference
Date: Tuesday, May 10, 2022 1:53:11 PM

CAUTION: The sender of this message is external to the NLRB network. Please use care when clicking on links and responding with sensitive information. Forward suspicious emails to [nlrbirc@nrlb.gov](mailto:nlrbi@nrlb.gov).

Chair McFerran and Members Prouty and Wilcox,

Greetings and I hope you all are well. I am going to be introducing you at the plenary at next week's ULA conference in Portland, OR. As a reminder, the plenary session takes place next Tuesday, May 17 from 8:45 - 9:30 a.m. Pacific in the Grand Ballroom at the Hilton Portland Downtown. We ask that you arrive at the plenary room at 7:30 a.m. for a brief technical check before the session begins.

I have a few questions for you related to presentation. Because they are straightforward, I thought I'd send them in an email, but I am also happy to hop on the phone to talk this through if that would be easier. Here are the questions:

- 1) Most importantly, how would you like to structure the presentation? I suggest that you each speak for a few minutes, then I will ask you a couple of questions (which I will send you in advance) to get the more informal part of the presentation started, and then you can take a few questions from the audience with the remaining time. But if there is an alternate format that you would prefer just let me know.
- 2) Seating and microphones: We plan to have the three of you sitting at a long table with three mikes. However, if you prefer we can arrange for a podium or even for wireless clip-on mikes if you'd like to stand or move around the room.
- 3) Finally, do you plan to use a powerpoint or other visuals? If so, we'll make sure to have the appropriate a/v set up.

Thanks again for agreeing to appear next week. And, again, happy to jump on the phone if you'd like to talk any of this through.

Best regards,
Matt

--

Matt Ginsburg
Associate General Counsel
AFL-CIO
815 Black Lives Matters Plaza NW
Washington, DC 20006

(202) 637-5397

cell: (202) 368-6390

mginsburg@aficio.org

From: [Wilcox, Gwynne](#)
To: [Alex Roe](#); [McFerran, Lauren](#)
Cc: [Matthew Ginsburg](#); [Craig Becker](#); [Prouty, David M.](#)
Subject: Re: ULA Conference -- change of plans
Date: Wednesday, May 11, 2022 9:11:47 AM

(b) (6). I am sure I speak for Dave, that we can cover for Lauren if a remote option is not feasible.

Gwynne

Get [Outlook for iOS](#)

From: Alex Roe <aroe@aficio.org>
Sent: Wednesday, May 11, 2022 8:53:45 AM
To: McFerran, Lauren <Lauren.McFerran@nlrb.gov>
Cc: Matthew Ginsburg <mginsburg@aficio.org>; Craig Becker <cbecker@aficio.org>; Prouty, David M. <David.Prouty@nlrb.gov>; Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Subject: Re: ULA Conference -- change of plans

CAUTION: The sender of this message is external to the NLRB network. Please use care when clicking on links and responding with sensitive information. Forward suspicious emails to nlrbirc@nlrb.gov.

I am sorry to hear this Lauren. (b) (6)

(b) (6)
As for calling in, we are not prepared to have streaming at the Tuesday plenary, though I'm sure we could set it up as we are going to have it for other plenaries. (b) (6)

Take care,
Alex

Alex Roe
ULA Managing Counsel
(202) 637-5214 (o)
(301) 793-3143 (c)
she/her

On Wed, May 11, 2022 at 8:44 AM McFerran, Lauren <Lauren.McFerran@nlrb.gov> wrote:

Good morning,

(b) (6)

While I would be happy to call into something on Tuesday, I suspect that would be less than ideal for your conference – just let me know if that would be helpful.

My apologies for throwing a last-minute wrench into the works, and I am sorry to miss what looks like a great conference.

Best,

Lauren

Lauren McFerran

Chairman, National Labor Relations Board

(she/her/hers)

1015 Half Street, SE

Washington, D.C. 20570

Follow us on Twitter: [@NLRBGC](#)/[@NLRB](#)

En español: [@NLRBGCes](#)/[@NLRBes](#)

From: [Judy Conti](#)
To: [McFerran, Lauren](#)
Subject: FW: Your Brigade Reservation Change
Date: Wednesday, May 11, 2022 1:52:44 PM
Attachments: [image005.png](#)

CAUTION: The sender of this message is external to the NLRB network. Please use care when clicking on links and responding with sensitive information. Forward suspicious emails to nrbirc@nlrb.gov.

Hi Lauren – I see you’re going to the Big Sky conference in Montana this august – it’s a lot of fun and I’m so glad you’ll be there! I made a dinner reservation for Wed night for the gang of us that will be out there and hoping you’ll be able to join us! Seema Nanda is a definite yes, and I’ve already reached out to Jen Abruzzo and Liz Schuler. Will be reaching out to Doug Parker, Jocelyn Samuels, and Lynn Rhinehart, who I hope is also going!

From: OpenTable | Brigade Reservations <no-reply@opentable.com>
Sent: Wednesday, May 11, 2022 1:49 PM
To: Judy Conti <jconti@nelp.org>
Subject: Your Brigade Reservation Change



|

Reservation changed

Here are the new details.



[Brigade](#)


Table for 8 on Wednesday, August 3, 2022 at 7:30 pm

Name: Judy Conti


Confirmation #: 20270

[See menu](#) | [Get directions](#)

TBD
Bozeman, MT 00000
(406) 624-6161


[Calendar](#)


[Modify](#)


[Cancel](#)

Have a question for Brigade?

Send a message

[Send a message](#)

For more information [Visit Help Center](#)

You're on track to unlock the 1,800-point mark!



You will collect **100** points upon dining. Your new balance will be **1,600** points.

[Log in to see your points and reservation history](#)



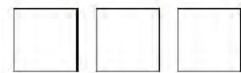
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For more information about Dining Rewards see the [OpenTable Rewards Program FAQs](#) and [Dining Rewards Terms](#).

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NELP



Judy Conti

Government Affairs Director

National Employment Law Project

2040 S St NW Lower Level • Washington DC • 20009



202-640-6517

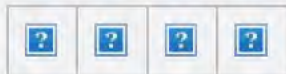
Cell: 202-320-



jconti@nelp.org

8113

www.nelp.org | raisetheminimumwage.com



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From: [Matthew Ginsburg](#)
To: [McFerran, Lauren](#)
Subject: Re: ULA Conference -- change of plans
Date: Friday, May 13, 2022 2:55:12 PM

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That's great - glad that will work!

I will get back to you, probably over the weekend, with the information about logging-in etc.

In the meantime, I am going to send a message to the entire panel about the format and we can decide if we want to try to talk before Tuesday for a few minutes.

Matt

On Fri, May 13, 2022 at 1:15 PM McFerran, Lauren <Lauren.McFerran@nrlb.gov> wrote:

I would be happy to conference in, and I'm optimistic that by next Tuesday that shouldn't be a problem, (b) (6) Just let me know what platform to use, etc.

Many thanks!

Lauren

From: Matthew Ginsburg <mginsburg@aficio.org>
Sent: Friday, May 13, 2022 10:02 AM
To: McFerran, Lauren <Lauren.McFerran@nrlb.gov>
Subject: Re: ULA Conference -- change of plans

CAUTION: The sender of this message is external to the NLRB network. Please use care when clicking on links and responding with sensitive information. Forward suspicious emails to [nlrbirc@nrlb.gov](mailto:nlrbi@nrlb.gov).

Lauren,

I am following up on behalf of Craig and Alex.

First, (b) (6)

With regard to next week, we are able to connect you remotely so that you could present if you would like, but we also entirely understand if you'd prefer not to do so given the circumstances. We're really flexible either way and certainly don't want to ask you to do it if you may be under the weather.

Can you let me know what you would prefer? I'd be happy to talk it through by phone if that would be helpful, although there is certainly no pressure to do so.

Thanks,

Matt

On Wed, May 11, 2022 at 8:44 AM McFerran, Lauren <Lauren.McFerran@nlrb.gov> wrote:

Good morning,

(b) (6)

While I would be happy to call into something on Tuesday, I suspect that would be less than ideal for your conference – just let me know if that would be helpful.

My apologies for throwing a last-minute wrench into the works, and I am sorry to miss what looks like a great conference.

Best,

Lauren

Lauren McFerran

Chairman, National Labor Relations Board

(she/her/hers)

1015 Half Street, SE

Washington, D.C. 20570

Follow us on Twitter: [@NLRBGC](#)/[@NLRB](#)

En español: [@NLRBGces](#)/[@NLRBes](#)

--

Matt Ginsburg
Associate General Counsel
AFL-CIO
815 Black Lives Matters Plaza NW
Washington, DC 20006
(202) 637-5397

mginsburg@aflcio.org

Pronouns: he, him, his

--

Matt Ginsburg
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AFL-CIO
815 Black Lives Matters Plaza NW
Washington, DC 20006
(202) 637-5397
mginsburg@aflcio.org

Pronouns: he, him, his

From: [McFerran, Lauren](#)
To: [Matthew Ginsburg](#)
Cc: [Prouty, David M.](#); [Wilcox, Gwynne](#)
Subject: RE: Planning for plenary at ULA conference - Take 2
Date: Monday, May 16, 2022 11:37:00 AM

That sounds good. Thanks!

From: Matthew Ginsburg <mginsburg@aficio.org>
Sent: Friday, May 13, 2022 4:20 PM
To: McFerran, Lauren <Lauren.McFerran@nlrb.gov>
Cc: Prouty, David M. <David.Prouty@nlrb.gov>; Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Subject: Re: Planning for plenary at ULA conference - Take 2

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Lauren

This looks great! Thanks for pulling this together.

I think what we should do is gather in person after the technical check on Tuesday morning at 7:30 am Pacific and call you and we can go over any last minute questions or issues.

That said, happy to continue to email or to hop on a call this evening or weekend if anyone feels it would be helpful.

Matt

Sent from my iPhone

On May 13, 2022, at 3:22 PM, McFerran, Lauren <Lauren.McFerran@nlrb.gov> wrote:

Hi, Matt—

We had pulled together a preliminary outline of topics, pasted below, and I've roughed out how much time I think each out take. If we did roughly this agenda of prepared remarks (leaving 15 minutes for Q&A) would that work?

Thanks!
Lauren

Introductory remarks (5 minutes)

Lauren (perspective as new Chair)

Gwynne and Dave (perspective as new Board Members)

Update on the State of the Board: (10)

COVID reentry and return to in person elections/hearings (Lauren)

Case processing efficiency initiative (Gwynne)

R unit update (Dave)

Substantive work: (10)

End of Emanuel term and early days of new majority (Lauren)

Benefits of public participation and overview of Notices and Invitations for Briefing (Dave)

Regulatory Agenda and pros and cons of rulemaking (Gwynne)

Internal agency initiatives: (5)

Internal labor relations (Dave)

DEIA initiatives (Gwynne)

Hiring – (Lauren)

From: Matthew Ginsburg <mginsburg@aficio.org>

Sent: Friday, May 13, 2022 3:09 PM

To: McFerran, Lauren <Lauren.McFerran@nrlb.gov>; Prouty, David M. <David.Prouty@nrlb.gov>; Wilcox, Gwynne <Gwynne.Wilcox@nrlb.gov>

Subject: Planning for plenary at ULA conference - Take 2

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All,

I am happy to report that Chair McFerran will be joining us virtually for the plenary on Tuesday.

Now that we're set in that regard, I would be happy to arrange a time for us all to speak briefly by phone about the session. However, I am also aware that everyone is busy and that time is short. I could speak at 5:30 or later today, or pretty much anytime this weekend. (I'm flying Monday morning).

Alternatively, we can get organized by email and then meet in person either Monday evening or Tuesday morning in Portland (linking in Lauren by phone). In case we decide

to go in that direction, I'll provide the following basic outline now:

- The session is Tuesday from 8:45 - 9:30, so a total of 45 minutes.
- I will introduce each of you briefly and then give you the floor. If you each speak for 10 minutes, that will leave 10-15 minutes for questions from the audience.
- I will prepare a few questions to prompt discussion in the event we do not have immediate questions from the audience. However, I think that is very unlikely.
- I understand there will not be a PowerPoint and I'm just going to assume that sitting at a table with microphones is fine with everyone.

All of this subject to change at your request, just let me know. And please let me know if you prefer to try to talk this evening or this weekend, or whether we should just get together once in Portland.

Matt

--

Matt Ginsburg
Associate General Counsel
AFL-CIO
815 Black Lives Matters Plaza NW
Washington, DC 20006
(202) 637-5397
mginsburg@aflcio.org
Pronouns: he, him, his

From: [Alex Roe](#)
To: [Alex Roe](#)
Cc: (b) (6) ; (b) (6) ; [Sherrille Mingo](#)
Subject: Re: ULA Conference Virtual Presenter
Date: Monday, May 16, 2022 12:26:59 PM

CAUTION: The sender of this message is external to the NLRB network. Please use care when clicking on links and responding with sensitive information. Forward suspicious emails to [nlrbirc@nrlb.gov](mailto:nlrbi@nrlb.gov).

One more thing--for presenters at breakout sessions: You should have received two invitations from Zoom, one for the first session and one for the second. After your first session presents, you will log off and then log in again using the second session link.

Thanks!

Alex Roe
ULA Managing Counsel
(202) 637-5214 (o)
(301) 793-3143 (c)
she/her

On Mon, May 16, 2022 at 9:06 AM Alex Roe <aroe@aficio.org> wrote:

Good morning Virtual Presenters:

Thank you so much for taking the time to speak to our members. This email is to review the process.

1) You will present through Zoom Webinar. It will look a lot like Zoom meetings except that you cannot see the virtual attendees. Only presenters show up on camera. If you do not want to appear (say if you present after someone else), you can turn off your camera and your window will not appear on the screen.

Remember to mute yourself!

2) You should have received an email from Zoom with the link to present. This link is individual to YOU. Please only use that one. If you did not receive the link, please let me know.

3) Please log on 30 minutes before the session starts. For those of you who are presenting in breakout sessions (as opposed to the morning plenary), you might get on before we do given transitions from prior panels. Just sit tight and wait for us to open the session. If it doesn't open by 15 minutes prior to the session start time, please call me.

4) Write down the phone number that is in the email from Zoom (below the links).

That way, if you lose your internet connection, you can call in and present via audio.

Thank you!

Alex Roe
Managing Counsel
AFL-CIO Union Lawyers Alliance
815 Black Lives Matter Plaza N.W.
Washington, DC 20006
(301) 793-3143 (cell)
(202) 637-5214 (office)
aroe@aficio.org

She/her

From: [Matthew Ginsburg](#)
To: [McFerran, Lauren](#)
Cc: [Prouty, David M.](#); [Wilcox, Gwynne](#)
Subject: Re: Planning for plenary at ULA conference - Take 2
Date: Monday, May 16, 2022 10:38:31 PM

CAUTION: The sender of this message is external to the NLRB network. Please use care when clicking on links and responding with sensitive information. Forward suspicious emails to nlrirc@nlrb.gov.

Hope you all arrived safely. I am still en route, having missed two (!) connections.

I look forward to seeing you tomorrow morning at 7:30 Pacific/10:30 Eastern for our technical check-in.

My cell is 202-368-6390 if you need to reach me in the morning.

Have a good evening,
Matt

Sent from my iPhone

On May 16, 2022, at 9:37 AM, McFerran, Lauren <Lauren.McFerran@nlrb.gov> wrote:

That sounds good. Thanks!

From: Matthew Ginsburg <mginsburg@aficio.org>
Sent: Friday, May 13, 2022 4:20 PM
To: McFerran, Lauren <Lauren.McFerran@nlrb.gov>
Cc: Prouty, David M. <David.Prouty@nlrb.gov>; Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Subject: Re: Planning for plenary at ULA conference - Take 2

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Lauren

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I think what we should do is gather in person after the technical check on Tuesday morning at 7:30 am Pacific and call you and we can go over any last minute questions or issues.

That said, happy to continue to email or to hop on a call this evening or weekend if anyone feels it would be helpful.

Matt

Sent from my iPhone

On May 13, 2022, at 3:22 PM, McFerran, Lauren
<Lauren.McFerran@nlrb.gov> wrote:

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Thanks!
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Lauren (perspective as new Chair)

Gwynne and Dave (perspective as new Board Members)

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COVID reentry and return to in person elections/hearings
(Lauren)

Case processing efficiency initiative (Gwynne)

R unit update (Dave)

Substantive work: (10)

End of Emanuel term and early days of new majority (Lauren)

Benefits of public participation and overview of Notices and
Invitations for Briefing (Dave)

Regulatory Agenda and pros and cons of rulemaking (Gwynne)

Internal agency initiatives: (5)

Internal labor relations (Dave)

DEIA initiatives (Gwynne)

Hiring – (Lauren)

From: Matthew Ginsburg <mginsburg@aficio.org>
Sent: Friday, May 13, 2022 3:09 PM
To: McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Prouty, David M. <David.Prouty@nlrb.gov>; Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Subject: Planning for plenary at ULA conference - Take 2

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- I understand there will not be a PowerPoint and I'm just going to assume that sitting at a table with microphones is fine with everyone.

All of this subject to change at your request, just let me know. And please let me know if you prefer to try to talk this evening or this weekend, or whether we should just get together once in Portland.

Matt

--

Matt Ginsburg
Associate General Counsel
AFL-CIO
815 Black Lives Matters Plaza NW
Washington, DC 20006
(202) 637-5397
mginsburg@aflcio.org
Pronouns: he, him, his

From: [ULA - ula.afcio.org](mailto:ULA-ula.afcio.org)
To: [McFerran, Lauren](#)
Subject: REMINDER: Plenary Starts in 10 minutes in the Grand Ballroom I
Date: Tuesday, May 17, 2022 10:54:40 AM

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Just a reminder that the plenary begins in 10 minutes in the Grand Ballroom I.
See you there.

From: [Alex Roe](#)
To: [McFerran, Lauren](#)
Subject: Re: Trouble logging in?
Date: Tuesday, May 17, 2022 11:08:48 AM

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Hi Lauren,

One thing we noticed last night is that virtual speakers can't hear when people applaud so they keep speaking and the audience here cannot hear them. I will send you chats to let you know if that happens.

Alex Roe

ULA Managing Counsel

(202) 637-5214 (o)

(301) 793-3143 (c)

she/her

On Tue, May 17, 2022 at 7:46 AM McFerran, Lauren <Lauren.McFerran@nlrb.gov> wrote:

I have a window that says "Waiting for the host to start this webinar" – is that where I'm supposed to be?

My cell is 202-215-3971 if you need to reach me by phone.

From: Alex Roe <aroe@aficio.org>
Sent: Tuesday, May 17, 2022 10:43 AM
To: McFerran, Lauren <Lauren.McFerran@nlrb.gov>
Subject: Trouble logging in?

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Hi Lauren,

Could you log into the Zoom session using the link sent to you from Zoom?

Call my cell if you are unable to connect.

Thanks!

Alex Roe

Managing Counsel

AFL-CIO Union Lawyers Alliance

815 Black Lives Matter Plaza N.W.

Washington, DC 20006

(301) 793-3143 (cell)

(202) 637-5214 (office)

aroe@afcio.org

She/her

From: [ULA - ula.aficio.org](mailto:ULA-ula.aficio.org)
To: [McFerran, Lauren](#)
Subject: Accessing virtual sessions
Date: Tuesday, May 17, 2022 3:32:20 PM

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Good afternoon,

We apologize for the hiccups this mornign with virtual access. The conference tracker platform had a bug so we changed the access to go directly through Zoom. You will see a Zoom link when you try to log into a virtual session. Please copy and paste it into your browser. You will need to log in with your own Zoom account (you can sign up for a free one if you don't have one) so that we can track attendance through Zoom.

Thank you for your patience.

Alex

From: [ULA - ula.afficio.org](mailto:ULA-ula.afficio.org)
To: [McFerran, Lauren](#)
Subject: C-1 Session Links for Virtual Participants
Date: Wednesday, May 18, 2022 1:24:56 PM

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Good morning.

We understand some virtual participants are having trouble finding the zoom links and passcodes for sessions. Here is a list for the C-Sessions for the second session.

When: May 18, 2022 11:00 AM Pacific Time (US and Canada)

Topic: C-1 Session TWO Organizing in the 21st Century

Please click the link below to join the webinar:

(b) (6)

Passcode: (b) (6)

Or One tap mobile :

US: (b) (6)

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: (b) (6)

Webinar ID: (b) (6)

Passcode: (b) (6)

International numbers available: (b) (6)

Topic: C-2 Session TWO Election Law Primer

Please click the link below to join the webinar:

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Topic: C-3 Session TWO Community Campaigns

Please click the link below to join the webinar:

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Webinar ID: (b) (6)

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International numbers available: (b) (6)

Topic: C-4 Session TWO Remote Union Meetings

Please click the link below to join the webinar:

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US: (b) (6)

Webinar ID: (b) (6)

Passcode: (b) (6)

International numbers available: (b) (6)

From: [ULA - ula.aficio.org](mailto:ULA-ula.aficio.org)
To: [McFerran, Lauren](#)
Subject: Possible COVID Exposure
Date: Monday, May 23, 2022 4:36:32 PM

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Dear Conference In-person Attendees,

It was wonderful to see you in Portland. Gathering in person is a difficult decision given the unpredictability of COVID risks and we appreciate the effort you all made to protect each other as we do our best to sustain and enrich our community. Unfortunately, we have heard from three of our colleagues who attended the meeting in-person that they tested positive for COVID shortly thereafter. We expect that you have all tested yourselves since you returned, but just in case you have not, we encourage you to do so to rule out asymptomatic infection.

You will soon receive links for submitting evaluations, obtaining materials, and accessing recorded sessions. In the meantime, if you are looking for a slideshow or paper but cannot find it, you can reach out to Alex Roe or (b) (6) and we will send them along.

With gratitude for all you do,

The ULA Staff

From: [ULA - ula.afcio.org](mailto:ULA-ula@afcio.org)
To: [McFerran, Lauren](mailto:McFerran.Lauren)
Cc: (b) (6)@afcio.org; aroe@afcio.org
Subject: Conference Evaluation
Date: Friday, June 3, 2022 6:24:33 PM

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Dear Conference Attendees,

Thank you to the over 600 ULA members who attended this year's ULA Annual Conference in Portland, OR, both in-person or virtually!

Please take a few minutes to complete this [online evaluation](#). Your feedback helps us plan next year's conference, which will be held April 30- May 2, 2023, in Pittsburgh, Pennsylvania. Be sure to mark those dates in your calendar now!

This announcement was also sent out via Action Network. If you have already completed the evaluation there, you do not need to do so here.

Best wishes,

The ULA Staff

From: [Alex Roe](#)
To: [McFerran, Lauren](#); [Wilcox, Gwynne](#); [Prouty, David M.](#)
Subject: Thank you
Date: Wednesday, June 8, 2022 9:42:57 PM
Attachments: [NLRB Members.docx.pdf](#)

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Dear Lauren, Gwynne, and David,
Please see the attached letter expressing our thanks for your appearance at the ULA annual conference. It's a treat for our members and for us to work with you.
With warm regards,
Alex

Alex Roe
Managing Counsel
AFL-CIO Union Lawyers Alliance
815 Black Lives Matter Plaza N.W.
Washington, DC 20006
(301) 793-3143 (cell)
(202) 637-5214 (office)
aroe@aficio.org

She/her



AFL-CIO

AMERICA'S UNIONS

**American Federation
of Labor and
Congress of Industrial
Organizations**

815 Black Lives Matter
Plaza NW
Washington, DC 20006
202-637-5000
aflcio.org

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James A. Williams Jr.
Ben Valdepina

June 8, 2022

Lauren McFerran, Chair
Dave Prouty, Member
Gwynne, Member
National Labor Relations Board

Dear Lauren, Gwynne and Dave:

Thank you very much for taking the time to come to Portland to address our Union Lawyers Alliance members. Despite the constraints on what you can discuss, you did a wonderful job informing our members both about what occurred during the waning days of the Trump Board and how the Board is operating with a new majority.

At a conference in which our members heard from the first female President of the AFL-CIO as well as from a panel of the first female general counsels of national unions, seeing the three of you as well as Jennifer was both fitting and inspiring.

We particularly appreciate the time Gwynne and Dave were able to spend in Portland outside the plenary session. We know it is a thrill for our lawyers, particularly our young lawyers, to meet and interact with Board Members. And Lauren, we hope you are fully recovered, and that we can host you in person at another conference.

All the best,

Craig and Alex

From: [Alex Roe](#)
To: [McFerran, Lauren](#); [Wilcox, Gwynne](#); [Prouty, David M.](#)
Subject: Re: Thank you
Date: Thursday, June 9, 2022 9:15:18 AM
Attachments: [NLRB Members Thank you letter.docx.pdf](#)

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With profound apologies for my error, please see the attached, corrected thank you letter!

Alex

Alex Roe
ULA Managing Counsel
(202) 637-5214 (o)
(301) 793-3143 (c)
she/her

On Wed, Jun 8, 2022 at 9:42 PM Alex Roe <aroe@aflcio.org> wrote:

Dear Lauren, Gwynne, and David,
Please see the attached letter expressing our thanks for your appearance at the ULA annual conference. It's a treat for our members and for us to work with you.
With warm regards,
Alex

Alex Roe
Managing Counsel
AFL-CIO Union Lawyers Alliance
815 Black Lives Matter Plaza N.W.
Washington, DC 20006
(301) 793-3143 (cell)
(202) 637-5214 (office)
aroe@aflcio.org

She/her



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Cheryl Eliano
Matthew S. Biggs
Roxanne Brown
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James A. Williams Jr.
Ben Valdep na

June 9, 2022

Lauren McFerran, Chair
David Prouty, Member
Gwynne Wilcox, Member
National Labor Relations Board

Dear Lauren, Gwynne and Dave:

Thank you very much for taking the time to come to Portland to address our Union Lawyers Alliance members. Despite the constraints on what you can discuss, you did a wonderful job informing our members both about what occurred during the waning days of the Trump Board and how the Board is operating with a new majority.

At a conference during which our members heard from the first female President of the AFL-CIO as well as from a panel of the first female general counsels of national unions, seeing the three of you as well as Jennifer was both fitting and inspiring.

We particularly appreciate the time Gwynne and Dave were able to spend in Portland outside the plenary session. We know it is a thrill for our lawyers, particularly our young lawyers, to meet and interact with Board Members. And Lauren, we hope you are fully recovered, and that we can host you in person at another conference.

All the best,

Craig and Alex

From: [ULA - ula.afcio.org](mailto:ula@afcio.org)
To: [McFerran, Lauren](mailto:McFerran.Lauren)
Cc: (b) (6)@afcio.org; aroe@afcio.org
Subject: ULA Conference Follow Up
Date: Monday, June 27, 2022 2:42:03 PM

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Dear Conference Attendees,

Thank you to those of you who have submitted evaluations! We received many kind words and a few very thoughtful, helpful critiques, all of which are sincerely appreciated. The form is still open and available [HERE](#).

For those of you who are awaiting CLE certificates, please bear with us as we are temporarily short staffed. We are working through the applications and appreciate your patience.

Best wishes,

The ULA Staff

From: [\[redacted\]](#)
To: [\[redacted\]](#)
Subject: [\[redacted\]](#)
Date: Mon Aug 14 2023 17:23:01

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On 8/14/2023 17:23:01, [redacted] wrote: I have a question about the NER network.

On 8/14/2023 17:23:01, [redacted] wrote: I have a question about the NER network.

From: [Judy Conti](#)
To: [McFerran, Lauren](#); [Jennifer Abruzzo](#); [Fred \(b\) \(6\)](#); [Matt Hayward](#)
Subject: Job Opening at NELP
Date: Wednesday, August 3, 2022 12:23:37 PM

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Hello dear friends! Greetings from Big Sky Montana, where I'll be hanging out with Jennifer and Lauren for a few days!

I'm hiring someone new for my team at NELP and I was hoping you could help me find the right person – here's the job announcement.

<https://nationalememploymentlawproject.applytojob.com/apply/MbQkRY2QqZ/Government-Affairs-Manager>


I'd be SO grateful if you could send it to anyone who might be interested and qualified. I work best with people who are real self-starters and need me as a thought partner, but not someone to teach them how to do their jobs.

Thanks in advance for your help!!!



Judy Conti

Government Affairs Director
National Employment Law Project
2040 S St NW Lower Level • Washington DC • 20009

 202-640-6517

Cell: 202-320-  jconti@nelp.org

8113

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From: [CHARLOTTE BURROWS](#)
To: [Block, Sharon](#); [Mia Dell](#); [JOCELYN SAMUELS](#)
Cc: [Ademola Oyefeso](#); [Jennifer Abruzzo](#); [Judy Conti](#); [McFerran, Lauren](#); [Seema - SOL Nanda](#); [\(b\) \(6\)](#); [Walker Mooney, Katelyn - OSEC](#); [Ishuler@aficio.org](#)
Subject: RE: Cabin Bar and Grill Big Sky Montana
Date: Thursday, August 4, 2022 2:32:14 PM
Attachments: [image001.png](#)

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I'd like to add my thanks to others'. It was truly a pleasure to join you.

All best,

Charlotte

From: Block, Sharon <sblock@law.harvard.edu>
Sent: Thursday, August 4, 2022 1:11 PM
To: Mia Dell <mdell@aficio.org>; JOCELYN SAMUELS <JOCELYN.SAMUELS@EEOC.GOV>
Cc: Ademola Oyefeso <aoyefeso@ufcw.org>; CHARLOTTE BURROWS <CHARLOTTE.BURROWS@EEOC.GOV>; Jennifer Abruzzo <[\(b\) \(6\)](#)>; Judy Conti <jconti@nelp.org>; Lauren McFerran (Lauren.mcferran@nlrb.gov) <lauren.mcferran@nlrb.gov>; Seema - SOL Nanda ([\(b\) \(6\)](#)) <[\(b\) \(6\)](#)>; Walker Mooney, Katelyn - OSEC <WalkerMooney.Katelyn@dol.gov>; Ishuler@aficio.org
Subject: Re: Cabin Bar and Grill Big Sky Montana

Yes!!! And, Mia, please thank Liz again for her generosity.

Sharon Block
Professor of Practice
Executive Director, Labor & Worklife Program Harvard Law School
C: (202) 302-1801
sblock@law.harvard.edu
[@sharblock](#)
she/her/hers

From: Mia Dell <mdell@aficio.org>
Sent: Thursday, August 4, 2022 11:09:26 AM
To: JOCELYN SAMUELS <JOCELYN.SAMUELS@eeoc.gov>
Cc: Ademola Oyefeso <aoyefeso@ufcw.org>; CHARLOTTE BURROWS <CHARLOTTE.BURROWS@eeoc.gov>; Jennifer Abruzzo <[\(b\) \(6\)](#)>; Judy Conti <jconti@nelp.org>; Lauren McFerran (Lauren.mcferran@nlrb.gov) <lauren.mcferran@nlrb.gov>;

Seema - SOL Nanda ((b) (6)) <((b) (6))>; Walker Mooney, Katelyn - OSEC <WalkerMooney.Katelyn@dol.gov>; lshuler@aficio.org <lshuler@aficio.org>; Block, Sharon <sblock@law.harvard.edu>

Subject: Re: Cabin Bar and Grill Big Sky Montana

Yes that was a treat!! Thx for organizing!

On Thu, Aug 4, 2022 at 11:07 AM JOCELYN SAMUELS <JOCELYN.SAMUELS@eeoc.gov> wrote:

Thanks so much for organizing such a wonderful dinner, Judy! It was a treat to be with all of you.

My best,

Jocelyn



Jocelyn Samuels (she/her)

Vice Chair

*U.S. Equal Employment
Opportunity Commission*

[131 M Street, N.E.](#)

[Washington, D.C. 20507](#)

Jocelyn.Samuels@eeoc.gov

Office: 202-921-2513

Web: www.EEOC.gov



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From: Judy Conti <jconti@nelp.org>

Date: Wednesday, August 3, 2022 at 9:39 AM

To: Seema - SOL Nanda ((b) (6)) <((b) (6))>, JOCELYN SAMUELS <JOCELYN.SAMUELS@EEOC.GOV>, CHARLOTTE BURROWS <CHARLOTTE.BURROWS@EEOC.GOV>, Ishuler@aflcio.org <Ishuler@aflcio.org>, Jennifer Abruzzo <((b) (6))>, sblock@law.harvard.edu <sblock@law.harvard.edu>, Ademola Oyefeso <aoyefeso@ufcw.org>, Lauren McFerran (Lauren.mcferran@nlrb.gov) <lauren.mcferran@nlrb.gov>, Walker Mooney, Katelyn - OSEC <WalkerMooney.Katelyn@dol.gov>, Mia Dell <mdell@aflcio.org>

Subject: Cabin Bar and Grill Big Sky Montana

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Good morning all! Hope you arrived in Montana without any difficulty and are already enjoying the beautiful views here. I'm really looking forward to our dinner tonight as well as Liz Schuler's kick-off keynote today!

There is a reception tonight from 6-8 but our reservation is at 7:30, so we'll need to leave a bit early. The Cabin is on the premises and probably about a 10 minute walk from the reception to the restaurant. If you go out to the center courtyard on the resort, with your back to the Huntley Lodge, which is where the conference will be held, and look across the property, you'll see a sign for The Cabin restaurant – it's in a complex with a few other stores and near some of the condos/townhouses.

Enjoy the morning and I'll see you all mid-day during registration.

All the best --
Judy

NELP



Judy Conti

Government Affairs Director

National Employment Law Project

[2040 S St NW](#) Lower Level • Washington DC • 20009



[202-640-](#)

[6517](#)



jconti@nelp.org

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--
Mia Dell
Deputy Director of Advocacy
AFL-CIO
202/748-3012
[\(she/her\)](#)